United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2282

United States Court of Appeals

FOR THE SECOND CIRCUIT

THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO, & LIRCO CREDIT CORPORATION,

Plaintiffs-Appellants,

—against—

WHITE MOTOR CORPORATION & GLENN F. KOMMER,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

(Volume I—pages 1A to 250A)

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D. C. 106 **69 C 753** DOCKET **APPEALED** DOOLING, J. **1A**

TITLE OF CASE	ATTORNEYS
THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M.D. AIELLO, P. AIELLO and LIRCO CREDIT CORP., VS WHITE MOTOR CORPORATION and GLENN F. KOMMER	*For Plaintiff:* Hellerstein, Rosier &Rember 19 W. 44th St. N.Y. 10036 *For Defendant:* REAVIS & MCGRATH ~~1 Chase Manhattan Plaza~~ New York, N. Y. 10005 Tel.269-7600

BASIS OF ACTION: DIVERSITY AUTOMOBILE DEALERS' FRANCHISE ACT, 15 U.S.C. Secs. 1221-1225

Seeks:$6,000,000.00

JURY TRIAL CLAIMED ON DEMAND ✓

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
6-27-69	COMPLAINT	15 --					
9-19-74	Notice of Appeal	5 -					
9-20-74	Docket fee		5 -				

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT	
		--

RECEIPTS, REMARKS, ETC.

69C 759 — 2A

THOMAS A. VINCEL VS WHITE MOTOR CORPORATION &

DATE	FILINGS PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
-27-69	COMPLAINT FILED. SUMMONS ISSUED.	1	
7-8-69	By ABRUZZO, J.- Order filed extending time for deft to answer complaint to Aug 18, 1969. (1) (P/C mailed to attys)	2	
7-8-69	Deft White Motor Corp's notice to take the depositions of various witnesses on various dated etc.	3	
11-69	Summons returned and filed, Glenn Kommer srvd on 7/1/69; White Motor Corp srvd on 7/2/69.	4	
23-69	Order to show cause with proof of service filed, pursuant to Rule 12(e) compelling pltffs to more definitively state the allegations etc. (ret July 30, 1969)	5	
29-69	Affidavit of Robert P. Levine and pltffs' memorandum filed in opposition to defts' motion pursuant to Rule 12(e).	6/7	
30-69	Before DOOLING, J.- Hearing on show cause, compelling pltffs to more definitively state the allegations etc. - Motion argued - Decision reserved.		
7-69	By DOOLING, J.- MEMORANDUM & ORDER FILED. It is ordered that the motion for a more definite statement is denied on the merits indicated. (See memo & Order) (P/C mailed to attys)	8	
14-69	Defts' limited interrogatories to pltffs filed.	8a	
15-69	Notice of motion and defts' memorandum of law filed pursuant to Rule 12(b)(6), dismissing the fourth cause of action, etc. (ret Aug 27, 1969)	9/10	
15-69	Defts' answer, defenses and counterclaims filed.	11	
22-69	By ROSLING, J.- Order filed that the dests' motion to dismiss the fourth cause of action etc. is adjd to Sept 17, 1969; Pltffs shall respond to defts' limited interrogatories on or before 9/10/69; The time pltffs may move or reply to defts' counterclaims is extended from 9/3/69 to 9/10/69. (P/C mailed to attys)	12	
27-69	Before ROSLING, J.- Motion pursuant to Rule 12(b)(6), dismissing the fourth cause of action etc. Respectfully referred to DOOLING, J.		
27-69	JURY DEMAND FILED.	13	
15-69	Defendants' reply memorandum of law filed.	14	
16-69	Pltff's memorandum of law filed. JFD.	15	
16-69	Pltffs' reply to counterclaims filed.	16	
6-69	By DOOLING, J.- Order on stip filed that Pltffs shall respond to defts' limited interrogatories pursuant to order of Judge Dooling, on or before 9-17-69.	17	

continued

3 CIVIL DOCKET THOMAS A. VINCEL VS WHITE MOTOR CORP & ANO.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
9-17-69	Before DOOLING, J.- Hearing on motion to dismss the fourth cause of action etc - Motion argued - Decision reserved - Counsel to report 9-29-69.			
9-19-69	Pltffs' Answers to defts' interrogatories filed		18	
11-14-69	By DOOLING, J.- Order on stip filed to set dated for interrogatories, answers, and demand for documents etc. (P/C mailed to attys)		19	
11-20-69	Before DOOLING, J.- Case called - Conference held and concluded.			
12-3-69	Defendant's interrogatories to plaintiffs filed.		20	
12-5-69	By Dooling, J. Conference Memo and Order filed (P/C mailed to attys)			21
12-19-69	Letter to Judge Dooling, from Stephen R. Steinberg dated 9-24-69 filed.		22	
12-29-69	By DOOLING, J.- Order on stip filed answers to interrogatories, further interrogatories, demands for documents etc. are to be served as indicated in order etc. The taking of depositions is to be commeced immediately after the determination of motions by Judge Dooling. (P/C mailed to attys)		23	
2-18-70	By DOOLING, J.- Order on stip filed, answers to interrogatories; interrogatories; demand for documents and to produce etc. are adjd to various dates as indicated etc. conference to be scheduled between 4-16-70 and 5-1-70 etc. substantive motions are to be made within 20 days after meeting with Judge Dooling The taking of depositions is to be commenced immediately after the determination of motions by Judge Dooling. (P/C mailed to attys)			24
3-5-70	Pltffs' answers to defts' interrogatories filed.			25
3-5-70	Pltffs' interrogatories to defts filed.			26
3-5-70	Defts' answers to pltffs' interrogatories filed.			27
3-17-70	Pltffs' further interrogatories to defts filed.			28
3-17-70	Pltffs' demand for documents filed.			29
3-23-70	Defts' additional interrogatories to pltffs filed.			30
3-23-70	Defts' demand for documents filed.			31
4-20-70	By DOOLING, J. Order on stip filed Answers to further interrogatories are to be served and documents are to be produced on or before 5-4-70; documents produced are to be filed on or before 5-18-70; conference to be scheduled between 5-18-70 & 6-1-70 ; substantive motions be made within 20 days after the meeting with Judge Dooling etc.. (P/C mailed to attys)			32

D. C. 110

9-C-753 THOMAS A. VINCEL, ET AL VS WHITE MOTOR CORPORATION & ANO.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
-4-70	Pltffs' answers to defts' additional interrogatories filed.			33
-4-70	Pltffs' documents - submitted pursuant to defts' demand dated 3-20-70 (filed 3-23-70) filed.			34
-6-70	Defts' answers to pltffs' further interrogatories filed.			35
-6-70	Defts' responding to pltffs' demand for documents filed.			36
-6-70	ITEM 3 produces by defts filed.			37
-1-70	BEFORE DOOLING J - Case called - Conference held & concluded.			==
-9-70	Letter to Judge DOOLING, from Hellerstein, Rosier & Rembar, Esqs. dated 9-4-70 filed, with related letters.			38
-15-72	Before DOOLING, J.- Case called - Pre-trial conference held and concluded.			
/31/72	Defts' memo of law filed.			39
-3-72	By DOOLING, J.- MEMORANDUM & ORDER dtd 2-2-72 filed. It is Ordered that the fourth cause of action is dismissed; and it is further ordered that the interrogatories referred to above be answered to the extent indicated; counsel are to agree on dates, and in the absence of agreement, apply for the fixing of dates. (copy of above memorandum & order mailed to attys)			40
-18-73	Memorandum of law in support of pltffs' motion to permit service of an amended complaint.			41
-18-73	Notice of motion & motion to permit pltffs to serve an amended complaint ret 1-31-73 at 4:30 P.M. filed			42
28-73	Notice of motion & memorandum of law in support to grant summary judgment & dismiss the complaint ret 3-21-73 filed.			43/44
-13-73	Defts' answers to pltffs' interrogatories filed.			45
/20/73	Affidavit of Thomas A. Vincel & Memorandum of law in opposition to defts. motion for summary judgement filed			46/47
-9-73	Affidavit of Stephen R. Steinberg and memo of law in support of defts' motion for summary judgment filed.			48/49
-9-73	Affidavit of Lawrence W. Boes filed.			50
-9-73	Affidavit of Glenn F. Kommer filed.			51
-10-73	Before Dooling, J.--Case called for hearing on pltff's motion to serve an amended complaint and deft's motion for summary judgment. Argument on motions heard. Leave granted to pltff to serve an amended complaint. Decision on deft's motion for summary judgment reserved.			
/23/73	Letter dtd. 5/22/73 from Robert P. Levine filed, with related letters.			52

69C-753 VINCEL, et al vs. WHITE MOTOR CORPORATION, et ano

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS	
		PLAINTIFF	DEFENDANT		
8-23-74	Defts' supplemental memorandum of law in support of motion for summary judgment filed.		53		
8-23-74	By DOOLING, J. - Memorandum and order dtd 8-23-74 granting pltffs' motion to file an amended complaint, and granting defts' motion for summary judgment dismissing complaint and amended complaint filed. Clerk to enter judgment.		54		
8-26-74	JUDGMENT dismissing complaint and amended complaint filed. (p/c mailed to attys).		55		JB6
9-19-74	Notice of appeal filed. Duplicate mailed to C of A & deft.		jn 56		
10-23-74	Affidavit of Robert B. Lee filed		57		

SUMMONS IN A CIVIL ACTION (Formerly D. C. Form No. 45a Rev. (6-42))

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

6A

CIVIL ACTION FILE NO.

69C 753

THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO, and LIRCO CREDIT CORP.,

Plaintiffs

v.

WHITE MOTOR CORPORATION and GLENN F. KOMMER,

Defendants.

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

HELLERSTEIN, ROSIER & REMBAR

plaintiff's attorney, whose address 19 West 44th Street, New York, N. Y. 10036

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

LEWIS ORGEL
Clerk of Court.

Deputy Clerk.

Date: June 27, 1969

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOECER, M. D. AIELLO, P. AIELLO, and LIRCO CREDIT CORP.,

Plaintiffs

- against -

WHITE MOTOR CORPORATION and GLENN F. KOMMER,

Defendants

Plaintiffs, by their attorneys, HELLERSTEIN, ROSIER & REMBAR, for their complaint allege:

FOR A FIRST CAUSE OF ACTION

1. Jurisdiction is founded upon diversity of citizenship pursuant to 18 U.S.C. Sec. 1332 and upon the Automobile Dealers' Franchise Act (commonly known as the Dealers' Day in Court Act), 15 U.S.C. Secs. 1221-1225 (1956).

2. At all times hereinafter mentioned plaintiffs or their predecessors in interest were shareholders of Long Island Diamond Reo Truck Co., Inc. (hereafter "L. I. REO"), a New York Corporation, owning 100% of the outstanding shares of stock of L. I. REO.

3. There are presently 112.19 outstanding shares of L. I. REO of which 54.19 are shares of Class A (voting) stock and 58 are shares of Class B (non-voting) stock. All these shares are owned by the plaintiffs as follows:

Thomas A. Vincel	29.53	30.00
Grace Vincel	-	1.00
Nuno Tardo	8.33	15.00
Irene Tardo	-	1.00
William Breen	8.33	6.00
Virginia Breen	-	1.00
Joseph Rumno	2.00	-
Rolf Hoeger	1.00	-
M.C. Aiello & P. Aiello	-	2.00
Lirco Credit Corp.	5.00	2.00

The damages to each of the plaintiffs as hereinafter pleaded in the FIRST, SECOND, THIRD, FOURTH, FIFTH and SIXTH causes of action are proportionate to their respective holdings of the 111.19 shares as aforesaid.

4. L.I. REO, known formerly as Long Island Reo Truck Co., Inc. was engaged for many years in the business of selling trucks and truck parts and servicing customers' trucks in the Counties of Queens, Nassau and Suffolk in the State of New York. A petition in bankruptcy in regard to L. I. Reo was filed with the United States District Court for the Eastern District of New York, on December 21, 1967.

5. At all times hereinafter mentioned defendant WHITE MOTOR CORPORATION (hereafter "WHITE MOTOR") was and is a corporation duly organized and existing under the laws of the State of Ohio; said corporation being engaged in the manufacture of trucks which it sold and sells throughout the United States, including the State of New York.

6. Defendant WHITE MOTOR is licensed to do business in the State of New York, maintaining an office for the transaction of business in the State of New York, and

through its officers, employees, and agents transacts business in the State of New York and derives substantial revenue from the sale of goods in the State of New York.

7. Upon information and belief, at all times hereinafter mentioned the defendant GLENN F. KOMMER (hereafter "KOMMER") was an executive employee of WHITE MOTOR. Upon information and belief at all times hereinafter mentio after its creation in the Spring of 1967 KOMMER was Treasur of the DIAMOND REO DIVISION of THE WHITE MOTOR CORPORATION (hereafter "DIAMOND REO DIVISION").

8. At all times hereinafter mentioned subsequent to November 23, 1966 defendant KOMMER was the perso designated by defendant WHITE MOTOR as Trustee pursuant to a voting trust agreement between the defendant KOMMER, L. I. REO, and the shareholders of L. I. REO and its affiliated corporations.

9. In or about June 1957, defendant WHITE MOTOR acquired substantially all the assets of REO MOTORS, INC., a manufacturer of trucks whose principal plant was located at Lansing, Michigan.

10. In or about April 1958, defendant WHITE MOTOR acquired the inventories and other assets of DIAMOND T MOTOR TRUCK CO., a manufacturer of trucks.

11. Thereafter, defendant WHITE MOTOR operated three principal truck divisions as follows: WHITE TRUCK DIVISION at Cleveland, Ohio; REO MOTOR TRUCK DIVISION at Lansing, Michigan; and DIAMOND T. MOTOR TRUCK DIVISION at Lansing, Michigan, all engaged in the manufacture of trucks for sale in the United States, including the State of New York, and foreign countries.

12. During the Spring of 1967, defendant WHITE MOTOR combined the REO MOTOR TRUCK and DIAMOND T. MOTOR TRUCK into the DIAMOND REO DIVISION which it continues to operate at Lansing, Michigan.

13. At all times hereinafter mentioned from and after 1959, L. I. REO, and its predecessor, were dealers in REO trucks and parts under successive franchise agreements entered into with defendant WHITE MOTOR. When the REO MOTOR TRUCK and DIAMOND T. MOTOR TRUCK divisions of WHITE MOTOR combined, L. I. REO became the dealer in DIAMOND REO trucks and parts under franchise from WHITE MOTOR for the Counties of Queens, Nassau and Suffolk.

14. Beginning in or about November 1966 defendants WHITE MOTOR and KOMMER planned and conspired to acquire domination and control over L. I. REO and its financial affairs, to destroy the working capital of L. I. REO, to acquire the assets of L. I. REO, to drive L. I. REO out of business, and to injure L. I. REO's shareholders.

15. On or about November 23, 1966, pursuant to said plan and conspiracy, defendant WHITE MOTOR required L. I. REO, and plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN, the major shareholders of L. I. REO, to enter into a Financing Agreement (annexed as Exhibit A).

16. The Financing Agreement of November 23, 1966, required plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN, the major holders of the voting stock of L. I. REO and of its affiliated corporations, to deposit their shares in a Voting Trust of which the Trustee would be a person designated by defendant WHITE MOTOR, to wit, defendant KOMMER.

Said Financing Agreement required L. I. REO to execute a five-year note to defendant WHITE MOTOR, required plaintiff THOMAS A. VINCEL to guarantee the note personally, and required plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN to agree that they and members of their families would not, while L. I. REO was indebted to WHITE MOTOR, engage in any business competitive with the business of L. I. REO or of its affiliated corporations.

17. Defendant WHITE MOTOR, pursuant to said plan and conspiracy, required the holders of all the stock of L. I. REO and its affiliated corporations to enter into Voting Trust Agreement with defendant KOMMER dated December 1966 (annexed as Exhibit B), and pursuant to said agreement plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN deposited their shares of stock in L. I. REO and in the affiliated corporations with defendant KOMMER, as Trustee.

18. The Voting Trust Agreement of December 29 1966 (hereafter "the Voting Trust Agreement") provided that it was to be governed by and construed in accordance with the laws of the State of New York. Upon information and belief the shares deposited with defendant KOMMER as Trustee were kept by him in the State of New York.

19. The Voting Trust Agreement contained the following provision for the appointment of a General Manager of L. I. REO by the Trustee:

> "It is understood and agreed that the Trustee may cause L. I. Reo's Board of Directors to appoint a person acceptable to him to act as L. I. Reo's General Manager, whose salary shall be paid by the Trustee . . ."

20. Thereafter, as a result of meetings in the State of New York defendant KOMMER selected SAMUEL ANTELIS (hereafter "ANTELIS"), a resident of New York, to be General Manager of L. I. REO and required the directors of L. I. REO to appoint him as General Manager. The Board of Directors of L. I. Reo thereupon adopted a resolution providing in part:

> "RESOLVED that Mr. Samuel Antelis of 172-20 133rd Avenue, Jamaica, New York, be and he hereby is appointed General Manager of this Corporation, to serve at the pleasure of G. F. Kommer, voting Trustee . . ."

21. ANTELIS served as General Manager of L. I. REO at the pleasure of defendants WHITE MOTOR and KOMMER and under their direction and supervision, and acted at all times as the agent and employee of defendants WHITE MOTOR and KOMMER.

22. By reason of the foregoing defendants WHITE MOTOR and KOMMER dominated and controlled L. I. REO and its financial affairs.

23. All monies realized from the sale of trucks and truck parts, and all other income realized by L. I. REO, were turned over by L. I. REO's officers and employees to the control of ANTELIS, and the application of said monies was in the exclusive control of ANTELIS.

24. L. I. REO, its officers and shareholders, relied upon defendants WHITE MOTOR and KOMMER to conduct the financial affairs of L. I. REO in good faith and in the best interests of L. I. REO, all of its creditors and its shareholders.

25. Defendants WHITE MOTOR and KOMMER did not act in good faith and in the best interests of L. I. REO, its creditors and stockholders, in the conduct of the financial affairs of L. I. REO but conducted them and caused ANTELIS to conduct them in a manner designed to effectuate the plan and conspiracy referred to in paragraph 14 of this complaint and to enable defendant WHITE MOTOR to claim at will that L. I. REO had breached its agreements with defendant WHITE MOTOR.

26. Defendant WHITE MOTOR, with the active assistance of defendant KOMMER and with the intent and purpose to effectuate the aforesaid plan and conspiracy, to evade the contractual and franchise obligations of defendant WHITE MOTOR to L. I. REO and the trust obligations of defendants WHITE MOTOR and KOMMER to the plaintiffs, to destroy the business of L. I. REO, and to cause injury to plaintiffs, determined to and did claim that its own acts and those of its agents (defendant KOMMER and ANTELIS) in the conduct of the financial affairs of L. I. REO constituted breaches by L. I. REO of its agreements with defendant WHITE MOTOR.

27. Using the alleged breaches as a pretext, defendant WHITE MOTOR, with the active assistance and participation of defendant KOMMER, declared L. I. REO to be in default under its agreements with defendant WHITE MOTOR, demanded possession of and seized all trucks and parts owned and possessed by L. I. REO, demanded full payment of monies allegedly owing to WHITE MOTOR, and took steps to enforce said unwarranted demands, as a result of which

L. I. REO was forced to close its doors and discontinue its business.

28. Prior thereto L. I. REO was one of the largest dealers in DIAMOND REO trucks and had made sales of approximately $12,000,000 under the franchises from WHITE MOTOR. L. I. REO's sales aggregated $2,710,131 during the fiscal year ending September 30, 1965, $2,961.625 during the fiscal year ended September 30, 1966, and were approaching a record during the fiscal year 1967. L. I. REO's operations were profitable and its prospects excellent.

29. In reliance upon its franchises from defendant WHITE MOTOR and its contractual arrangements with defendants WHITE MOTOR and KOMMER, L. I. REO and its affiliated corporations purchased vehicles and parts and made substantial capital investments for the purpose of increasing the sales volume and potential of L. I. REO, plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN devoted their talents and an extraordinary amount of time and effort to the building of a valuable distributorship of defendant WHITE MOTOR's trucks.

30. As a result of the aforesaid acts of defendants WHITE MOTOR and KOMMER which constituted willful misfeasance and gross negligence as those terms are used in the Voting Trust Agreement, L. I. REO was unable to fill orders on hand for new trucks and parts and to continue negotiations for the future sale of trucks and parts, its working capital and its good will were destroyed, and L. I. REO was forced into bankruptcy and out of business.

31. As holders of 100% of the stock of L. I. REO, plaintiffs have been directly damaged by the destruction

and bankruptcy of L. I. REO carried out by defendants WHITE MOTOR and KOMMER.

32. The agreements referred to in paragraphs 15 through 19 of this complaint were prepared in the State of New York as a result of meetings between the parties, including defendant KOMMER. Following the execution of the agreements, defendant KOMMER and his agents engaged in numerous activities in the State of New York relative to the agreements and to the conduct of the financial affairs of L. I. REO.

33. The foregoing acts of the defendants were in breach of the contractual relationship existing between the plaintiffs or their predecessors in interest and the defendants.

34. By reason of the foregoing plaintiffs have been damaged in the sum of $3,000,000.

FOR A SECOND CAUSE OF ACTION

35. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 32 of this complaint as though fully set forth herein.

36. Defendants WHITE MOTOR and KOMMER assumed fiduciary obligations to the shareholders of L. I. REO, to act in the best interests of L. I. REO and its shareholders in the control and management of L. I. REO and its financial affairs.

37. After obtaining domination, control and management of L. I. REO and its financial affairs, defendants WHITE MOTOR and KOMMER breached their said fiduciary obligations; acted in their own selfish interests and in bad faith

acted deliberately against the interests of L. I. REO and its shareholders; subordinated the interests of L. I. REO and its shareholders to their own interests; and engaged in acts detrimental and prejudicial to the shareholders of L. I. REO, that constituted willful misfeasance and gross negligence.

38. By reason of the foregoing, plaintiffs have been damaged in the sum of $3,000,000.

FOR A THIRD CAUSE OF ACTION

39. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 32 of this complaint as though fully set forth herein.

40. The shareholders of L. I. REO, and L. I. REO, entered into said agreements as a result of intimidation, duress and coercion on the part of defendants WHITE MOTOR and KOMMER in that defendants WHITE MOTOR and KOMMER threatened to cancel the franchise of L. I. REO, put L. I. REO out of business, and cause criminal proceedings to be brought against L. I. REO's officers unless the agreements were executed; and said agreements would not have been executed by L. I. REO, or by its shareholders, had it not been for such intimidation, duress, and coercion.

41. The said agreements were extremely onerous in their terms and were designed by defendants WHITE MOTOR and KOMMER to enable them to acquire domination and control over L. I. REO and its financial affairs; to destroy the working capital and acquire the assets of L. I. REO; to drive L. I. REO out of business, and to injure L. I. REO's

shareholders.

42. By reason of the foregoing, plaintiffs have been damaged in the sum of $3,000,000.

43. The foregoing acts of the defendants were willful and malicious and done with intent to injure and harm L. I. REO's shareholders. Plaintiffs have been further damaged in the sum of $3,000,000.

FOR A FOURTH CAUSE OF ACTION

44. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 32, paragraphs 36 and 37, and paragraphs 40 and 41 of this complaint as though fully set forth herein.

45. Upon information and belief defendants WHITE MOTOR and KOMMER, officers of WHITE MOTOR, the WHITE MOTOR TRUCK DIVISION, REO MOTOR TRUCK DIVISION and DIAMOND T. MOTOR TRUCK DIVISION of WHITE MOTOR, and officials of said divisions, entered into a conspiracy in or about 1966 to combine WHITE MOTOR's major truck divisions and to drive out of business the largest dealers, including L. I. REO, selling only DIAMOND T. or REO or DIAMOND REO trucks, so as to circumvent WHITE MOTOR's contractual obligations and franchis commitments to them, thereby benefiting defendant WHITE MOTOR and distributors of WHITE MOTOR trucks.

46. Upon information and belief, pursuant to said conspiracy, during and after the year 1966:

(a) Defendant WHITE MOTOR's REO MOTOR TRUCK DIVISION and its DIAMOND T. MOTOR TRUCK DIVISION were combined and the separate manufacture of DIAMOND T. trucks

and REO trucks was discontinued. 18A

(b) Defendant WHITE MOTOR and its co-conspirators offered and are offering the sale of trucks and parts manufactured at the DIAMOND REO DIVISION at Lansing, Michigan, under the WHITE MOTOR label through WHITE MOTOR branches and to dealers under franchise from WHITE MOTOR's WHITE MOTOR TRUCK DIVISION.

(c) Defendant WHITE MOTOR and its co-conspirators sold and are selling REO trucks and DIAMOND REO trucks to certain customers at prices lower than its prices to REO and DIAMOND REO dealers.

(d) Defendant WHITE MOTOR and its co-conspirators sold and are selling REO truck parts and DIAMOND REO truck parts to WHITE MOTOR dealers at the same prices charged to REO and DIAMOND REO dealers, while charging REO and DIAMOND REO dealers higher prices for WHITE MOTOR truck parts than the prices charged to WHITE MOTOR dealers.

(e) Defendant WHITE MOTOR and its co-conspirators gave and are giving to WHITE MOTOR branches and dealers detailed information on sales of trucks by REO and DIAMOND REO dealers in order to enable the WHITE MOTOR branches and dealers to take away from the REO and DIAMOND REO dealers the parts business on trucks sold by the REO and DIAMOND REO dealers, and without giving comparable information to REO and DIAMOND REO dealers on sales of trucks by WHITE MOTOR branches and dealers.

(f) Up to the time that defendants WHITE MOTOR and KOMMER drove L. I. REO out of business, L. I. REO was one of the REO and DIAMOND REO dealers deprived of

business and injured by the aforesaid conspiracy and practices of defendant WHITE MOTOR and its co-conspirators.

(g) By means of intimidation, duress and coercion as alleged in paragraph 40 of this complaint, and for the purposes of the aforesaid conspiracy, defendants WHITE MOTOR and KOMMER required L. I. REO and its shareholders, and L. I. REO's affiliated corporations and their shareholders to enter into the agreements and commitments alleged in paragraph 15 through 19 of this complaint.

(h) Defendants WHITE MOTOR and KOMMER dominated and controlled L. I. REO in the manner alleged in paragraphs 14 through 23 of this complaint.

(i) Defendants WHITE MOTOR and KOMMER exercised their control of L. I. REO in the manner alleged in paragraphs 25 through 27 and paragraphs 30, 37, 40, 41 and 43 of this complaint.

(j) As a result of this conspiracy and unfair competition, L. I. REO was forced into bankruptcy and driven out of business, its working capital was destroyed and its assets were seized by WHITE MOTOR and plaintiffs were injured.

47. By reason of the foregoing, plaintiffs have been damaged in the sum of $3,000,000.

48. The foregoing acts of the defendants were willful and malicious and done with intent to injure and harm the plaintiffs. Plaintiffs have been further damaged in the sum of $3,000,000.

FOR A FIFTH CAUSE OF ACTION

49. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 32,

paragraphs 36 and 37, paragraphs 40 and 41, and paragraphs 45 and 46 of this complaint as though fully set forth herein.

50. The defendants failed to act in a fair and equitable manner toward L. I. REO and its shareholders and coerced and intimidated L. I. REO and its shareholders and cancelled the aforementioned franchise of L. I. REO to the damage of L. I. REO and the plaintiffs in violation of the Automobile Dealers' Franchise Act, 15 U.S.C. Secs. 1221-1225.

51. As a result of the aforesaid the plaintiffs have been damaged in the sum of $3,000,000.

52. As a result of the aforesaid violation of the Automobile Dealers' Franchise Act the plaintiffs have incurred and will incur legal expenses in the sum of $100,000.

FOR A SIXTH CAUSE OF ACTION

53. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 32, paragraphs 36 and 37, paragraphs 40 and 41, paragraphs 45 and 46, and paragraph 50 of this complaint as though fully set forth herein.

54. The defendants terminated the dealer franchise running from defendant WHITE MOTOR to L. I. REO and terminated defendants' other agreements with L. I. REO and its shareholders without cause, to the damage of L. I. REO and the plaintiffs and in violation of Sec. 197 of the General Business Law of the State of New York.

55. As a result of the aforesaid plaintiffs have been damaged in the sum of $3,000,000.

WHEREFORE, plaintiffs demand judgment against the defendants in the sum of $3,000,000 on the first cause of action; in the sum of $3,000,000 on the second cause of action; in the sum of $3,000,000 on the third cause of action with an additional $3,000,000 as punitive damages on said cause of action; in the sum of $3,000,000 on the fourth cause of action with an additional $3,000,000 as punitive damages on said cause of action; in the sum of $3,000,000 on the fifth cause of action with an additional $100,000 for legal expenses on said cause of action; and in the sum of $3,000,000 on the sixth cause of action; together with costs and disbursements.

HELLERSTEIN, ROSIER & REMBAR
Attorneys for Plaintiffs
19 West 44th Street
New York, New York 10036

by: s/ [illegible]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

22A

THOMAS A. VINCEL, being duly sworn, deposes and says that deponent is one of the plaintiffs in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

THOMAS A. VINCEL

Sworn to before me this
16th day of June 1969.

ROSALINE GORDON
NOTARY PUBLIC, State of New York
No. 31-6600775
Qualified in New York County
Commission Expires March 30, 1970

AGREEMENT made as of this 23rd day of November, 1966 by and between WHITE MOTOR CORPORATION, an Ohio corporation, having its principal place of business at 100 Erieview Plaza, Cleveland, Ohio ("White" hereinafter), LONG ISLAND REO TRUCK CO., INC., a New York corporation, having its principal place of business at 47-19 69th Street, Woodside, New York ("L.I. Reo" hereinafter), THOMAS A. VINCEL, NUNO TARDO, and WILLIAM E. BREEN, shareholders of L. I. Reo (hereinafter collectively referred to as "Shareholders"),

WHEREAS, L.I. Reo has for some time been a dealer in trucks manufactured by White's Lansing Division and has been White's only such dealer in Queens, Nassau and Suffolk Counties, New York pursuant to the agreement annexed as Exhibit "A"; and

WHEREAS, L.I. Reo has in the past financed its purchases of new and used trucks by using the facilities of Universal C.I.T. Credit Corporation ("C.I.T." hereinafter) pursuant to the documents annexed as Exhibit "B"; and

WHEREAS, on December 27, 1962, White agreed to purchase such of L.I. Reo's "obligations" to C.I.T. in connection with such financing as were not met when due pursuant to the agreement annexed as Exhibit "C"; and

EXHIBIT A

WHEREAS, C.I.T., pursuant to White's aforesaid agreement, has demanded that White purchase from C.I.T. all of L.I. Reo's "obligations" to C.I.T., and White has agreed to purchase such obligations; and

WHEREAS, the terms of said obligations provide that L.I. Reo's "obligations" are accelerated if there is a default; and L.I. Reo is indebted to White, as purchaser from C.I.T., in the amount of approximately $94,248.78, less a credit due L.I. Reo of $4,080.58; and

WHEREAS, L.I. Reo is also indebted to White on an open parts account in the amount of $ 105,669.37 as of Novembe 23 , 1966; and

WHEREAS, L.I. Reo and Shareholders have requested that White forebear from presently demanding payment as the purchaser of L.I. Reo's obligations to C.I.T. and on the open parts account.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. Mutual Release: White hereby releases and forever discharges L.I. Reo, the Shareholders and all of the other shareholders who execute a release to White at the foot of this agreement, their successors and assigns, and L.I. Reo and the Shareholders hereby release and forever discharge White, its Divisions, successors and assigns,

from all manner of actions, causes of action, claims and demands whatsoever, which against the other it ever had, now has, or which they or their successors hereafter can, or which they may have, for, upon, or by reason of any matter, cause or thing whatsoever to this date, except that this release shall not apply to the duties and obligations contained in and collateral to this Agreement and to a certain note dated October 28, 1965 from L. I. Reo to White originally in the sum of $54,520.43 on which there is now due the sum of $18,180.00 as of November 23, 1966.

Shareholders agree to use their best effort to cause all of the other shareholders of L.I. Reo to execute, at the foot of this Agreement, a similar release to White, in exchange for the similar release to them contained in paragraph 1, above; provided, however, it is agreed that this Agreement shall not become effective until said release is so executed by at least 90% of all of the Shareholders of L.I. Reo holding any class of L.I. Reo stock.

In the event 100% of the shareholders of any class of stock of L.I. Reo do not execute the release at the foot of this Agreement, L.I. Reo hereby agrees to indemnify and hold White, its survivors, successors and

assigns, harmless from any judgments which may be entered against White in any action commenced against White arising out of any causes of action or claims or demands against White, including the payment to White of its reasonable attorneys fees and costs incurred in the defense of any such action or proceeding.

2. C.I.T. Obligations: White represents that it has purchased from C.I.T., pursuant to its agreement of December 27, 1962, certain of L.I. Reo's obligations to C.I.T. in connection with the wholesale financing of its purchases of new and used trucks. L.I. Reo agrees that White has all of the rights C.I.T. had as holder of said obligations and agrees that it will make no claim or demand against White. L.I. Reo represents that as of the date of its execution of this Agreement, the vehicles listed in Exhibit "D" annexed hereto are encumbered by chattel mortgages and trust receipts held by White as assignee of C.I.T. in connection with their financing in the amounts and on the dates therein set forth and that L.I. Reo has not sold or otherwise transferred the vehicles and has received down payments, deposits or other monies from retail purchasers of said vehicles in the amounts therein set forth.

3. Agreement To Establish Voting Trust: Shareholders agree that they will, simultaneously with the execution of this Agreement, execute an agreement causing

to be placed in a voting trust all of the shares of voting stock owned by themselves and their families, including spouses, parents, children, brothers and sisters in the following corporations:

L.I. Reo Truck Co., Inc.
Lirco Enterprises, Inc.
Lirco Credit Corp.
Trojan Servicing Corp.
Lirco Truck Leasing Corp.

It is agreed thatthe Trustee under said voting trust agreement shall be a person designated by White, to wit, Glenn Kommer of Lansing, Michigan. It is further agreed that the voting trust agreement shall terminate on the date when L.I. Reo has fully paid the note described in Paragraph 5 below, the note described in Paragraph 6 below, and has satisfied all of its obligations to White as assignee from C.I.T. referred to in Paragraph 2 above.

It is expressly understood and agreed that persons holding at least 90% of any class of stock in any of the aforesaid corporations must consent to and approve the establishment of the voting trust contemplated by this paragraph. In the event persons so holding 90% of the stock of any class in any of the corporations involved in the voting trust agreement refuses to consent in writing to the establishment of the voting trust, White may, at its option, declare this Agreement to be null and void ab initio and shall so notify L.I. Reo and the Shareholders in writing.

4. Capital Loan: In the event L.I. Reo is able to obtain a working capital loan of $50,000 and in the event that one of the conditions of said loan is that a majority of the voting stock of Lirco Enterprises, Inc. be used as collateral and be placed in a voting trust to be controlled by said financial institution, then White agrees to cause to be released from the voting trust to be established pursuant to Paragraph 3 above so much of the voting stock of Lirco Enterprises, Inc. required by said lender; provided, however, that prior thereto Lirco Enterprises, Inc. has agreed, in writing, to reduce the total rent paid by L.I. Reo to Lirco Enterprises, Inc. under leases covering properties in Woodside and Happaugue, New York to a maximum aggregate rental on all such properties of $3,000 per month for a period equal to the term of the Voting Trust, and subject to any increases in taxes and assessments pursuant to the terms of said leases.

Said loan shall not be consummated by L.I. Reo unless all instruments to be executed in connection therewith have been submitted to White or its counsel for approval and said instruments and the terms of said loan have been approved by White or its counsel, in writing.

5. Present Outstanding Note and Return of Parts: L.I. Reo acknowledges that on October 28, 1965 it executed in favor of White a note in the sum of

$ 54,520.43 upon which there has been paid to date (11/2
the sum of $ 36,340.43 , leaving a balance due under said note of $ 18,180.00 . Said note shall remain in full force and effect and payments shall continue to be made by L.I. Reo in the amount of $ 3,030.00 per month until the note is fully paid. In connection with the payment of the note, L.I. Reo agrees to return to White's Lansing Division approximately $20,000 of current excess parts; the acceptance of such returns shall be subject to White's approval. As said parts are received by White's Lansing Division, the amount of the credit as mutually agreed by White and L.I. Reo for each said part accepted shall be applied to reduce the last payment due under said note, etc.

6. New Note: L.I. Reo will, simultaneous with the execution of this Agreement, execute its note, which Thomas A. Vincel agrees he shall personally guarantee, in the amount of $ 195,837.50 , representing the amount of its present open parts account of $ 105,669.37 and $ 90,168.20 representing the amount of its present unpaid obligations to date to White as assignee of C.I.T. of certain of L.I. Reo's obligations. Said note shall bear simple interest at the annual rate of 6-1/2% and shall be payable on or before five (5) years from its date. It shall provide for payment as follows:

(a) With each new truck hereafter delivered to a L.I. Reo retail customer by White, there shall be a $500 charge added to the dealer net invoice price, which $500 when paid shall be credited in payment of the note;

(b) L.I. Reo hereby assigns to White all of its right, title and interest in and to all reserves retained or hereinafter developed by C.I.T. in connection with C.I.T.'s past or future financing of retail paper for customers of L.I. Reo. All amounts received by White from C.I.T. as a result of assignment of the reserves retained by C.I.T. shall be credited by White in payment of the note. In the event any reserves are still available and not reduced to cash when the note has been fully paid, White will reassign to L.I. Reo its right to receive such reserves;

(c) All amounts now due from White to L.I. Reo and hereafter accruing to L.I. Reo during the term of the note by reason of warranty claims arising under the terms of the present and any succeeding dealer selling agreement between L.I. Reo and White will be credited in payment of the note. The parties agree that there is presently due L.I. Reo on pending accepted warranty claims the sum of $

(d) In cash by L. I. Reo at any time other than described in subparagraphs "a", "b", "c", above.

The note shall be secured by a chattel mortgage and/or other security instruments acceptable to White on all new and used trucks now or hereafter owned by L.I. Reo, except that White will, upon request, subordinate its security interest in favor of persons holding purchase money security interests in all truck inventory hereafter acquired. L.I. Reo will execute upon White's request, such instruments as White deems necessary

to insure that White will have a floating lien on all new and used trucks hereafter acquired by L.I. Reo and will execute all such instruments as White request in connection therewith.

7. Present Parts Inventory: L.I. Reo agrees that as additional security for the note described in paragraph 6 above, it will execute in favor of White a chattel mortgage and/or other security instrument acceptable to White on all of its present parts inventory. L.I. Reo agrees that it will use its best efforts to procure financing for working capital purposes by factoring its present parts inventory under a warehouse receipt or other program. In the event L.I. Reo procures such financing, then White will release its security interest in the present parts inventory, as hereinbefore provided, and will execute all documents required by such financial institution to accomplish same.

8. Accounts Receivable: L.I. Reo will use its best efforts to finance its present and future accounts receivable for cash for use as working capital.

9. Future Parts: L.I. Reo agrees that all parts ordered by it from White in the future will be ordered only on a C.O.D. basis.

10. Shipment of New Trucks: No new truck shall hereafter be ordered by L.I. Reo from White and White shall have no obligations to place any order into production

unless said order is accompanied by proof satisfactory to White that L.I. Reo has an identifiable retail customer for each such truck and that such retail customer has a commitment for financing the purchase price of such truck or will pay cash upon delivery. White shall have no obligations to place any order into production until receiving such truck. White will transport each finished truck to New York at L. I. Reo's expense and shall deliver same to White's Regional Representative and title shall remain in White's regional inventory. Upon the request of L.I. Reo, said truck may be delivered to a body shop for installation of a body and L.I. Reo shall be soley responsible to such body shop for all sums due such body shop. Possession will pass from White directly to the retail customer only when White receives cash; or a financial institution's or the retail customer's check made payable to L.I. Reo and properly endorsed by L.I. Reo to White. In the event such check (or if cash is received) plus the amount released to White pursuant to paragraph 12, below, is in excess of White's total invoice price for said truck including the cost of delivery from the point of shipment, White shall transmit to L.I. Reo the amount of such excess. L.I. Reo shall, upon White's request, execute such instruments required under Section 2-326(3) and (4) and/or Article 9 of the New York Uniform Commercial Code which White deems necessary for the protection of its interests in said trucks prior to the sale and delivery thereof to retail purchasers for value in the ordinary course of business.

11. Deposit on New Truck Orders: L.I. Reo shall establish an escrow bank account for the deposit of all payments received by L.I. Reo from retail customers as down payments on new trucks ordered pursuant to paragraph 10, which sum shall be released to White by cash or certified check at the time of delivery of possession of the new truck to the retail customer.

12. Non-Competition by Stockholders: For as long as the notes described in Paragraphs 5 and 6 above are unpaid and for as long as L.I. Reo is obligated to White as purchaser from C.I.T. pursuant to Paragraph 2, above, the Shareholders agree that they will not, and that they will not aid, allow or cause their family to, directly or indirectly, in any manner engage in any business which is competitive with the businesses of the corporations enumerated in Paragraph 3 above, in the following counties:

NEW YORK

New York
Bronx
Queens
Kings
Richmond
Westchester
Putnam
Orange
Nassau
Suffolk
Rockland

NEW JERSEY

Essex
Bergen
Hudson

34A

CONNECTICUT

Fairfield

13. Access to Records and Financial Information: L. I. Reo shall, upon request by White, furnish to White any financial information of any type requested by White and permit the inspection by White of its books or records of account.

14. Miscellaneous:

(a) This instrument and the other documents attached hereto or referred to herein contain the entire Agreement between the parties and may not be modified or otherwise amended other than by an agreement in writing signed by all the parties hereto; provided, however, that nothing herein shall be deemed to supercede or otherwise modify or amend any of the terms and conditions of the present and subsequent dealer selling agreements between White and L.I. Reo;

(b) This Agreement shall be binding upon the parties hereto, their successors, assigns and legal representatives;

(c) A waiver by White of any term or condition of this Agreement shall not be deemed to be a waiver of any other terms or conditions of this Agreement, nor shall it be construed as a future waiver of the term or condition so waived;

(d) This Agreement shall be interpreted and enforced in all respects under the laws of the State of New York now or hereafter existing.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written:

ATTEST:

WHITE MOTOR CORPORATION

By C. E. Douglas

ATTEST:

LONG ISLAND REO TRUCK CO., INC.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170470, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

By [illegible] Pres

[illegible]
THOMAS A. VINCEL

[illegible]
NUNO TARDO

[illegible]
WILLIAM E. BREEN

RELEASE BY OTHER SHAREHOLDERS

In consideration of the execution of the aforesaid Agreement by White Motor Corporation and the release to the undersigned contained in paragraph 1 thereof, Henry R. Lanz, Leon Maganza, Joseph Rummo, Rolf Hoeger, M.C. Aiello and P. Aiello, each being a shareholder of L.I. Reo Truck Co., Inc. hereby releases and forever discharges White Motor Corporation, its Divisions, successors and assigns, from all manner of actions, causes of actions, claims and demands whatsoever which against White Motor Corporation, its Divisions, successors and Assigns each of them ever had, now has, or which each of them or their successors hereafter can, or which they may have, for, upon, or by reason of any matter, cause or thing whatsoever to this date.

Henry R Lanz
HENRY R. LANZ (10 shares A stock)

LEON MAGANZA (5 shares A stock and 6 shares B stock)

Joseph Rummo
JOSEPH RUMMO (2 shares A stock)

Rolf Hoeger
ROLF HOEGER (1 share A stock)

Marie C. Aiello Peter Aiello
M. C. AIELLO and P. AIELLO
(2 shares B stock)

STATE OF NEW YORK)
: SS.:
COUNTY OF New York)

On the 23rd day of November 1966 before me personally came THOMAS A. VINCEL to me known, who, being by me duly sworn, did depose and say that he resides at No. 34-19 21st Street, Bayside, Queens, New York that he is the President of Long Island Reo Truck Co., Inc. the corporation described in, and which executed, the foregoing Agreement; that he knows the seal of said corporation; that the seal affixed to said Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

John A. Pike Jr.
John A. Pike, Jr.
Notary Public, State of New York
No. 24-3179-70, Certificate in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF ~~NEW YORK~~ OHIO)
: SS.:
COUNTY OF ~~New York~~ Cuyahoga)

On the 23rd day of November 1966 before me personally came C. E. Douglas to me known, who, being by me duly sworn, did depose and say that he resides at No.
that he is the ~~President~~ TREASURER of White Motor Corporation, the corporation described in, and which executed, the foregoing Agreement; that he knows the seal of said corporation; that the seal affixed to said Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

STATE OF NEW YORK)
: SS.:
COUNTY OF New York)

On the 23rd day of November 1966 before me personally came Thomas A. Vincel, Nuno Tardo and William E. Breen, to me known, and known to me to be the individuals described in, and who executed the foregoing Agreement, and duly acknowledged to me that they executed the same.

John A. Pike Jr.
John A. Pike, Jr.
Notary Public, State of New York

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On the 23rd day of November, 1966 before me personally came Henry R. Lanz, to me known, and known to me to be the individual described in, and who executed the foregoing "Release by Other Shareholders", and duly acknowledged to me that he executed the same.

John S. Pyke Jr.
JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170570, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
Queens SS.:
COUNTY OF ~~NEW YORK~~)

On the 23rd day of November, 1966 before me personally came ~~Leon Maganus~~, Joseph Rummo, Ralph Hoeger, M.C. Aiello and P. Aiello to me known, and known to me to be the individuals described in, and who executed the foregoing "Release by Other Shareholders", and duly acknowledged to me that they executed the same.

Ralph Hoeger

Dated at Woodside, N.Y.
Dec. 14, 1966
Alexander Papa
[illegible]
No. 41-[illegible]
[illegible] 1968

Patsy Aiello

Joseph Rummo

VOTING TRUST AGREEMENT, made this 7th day of December, 1966 between the undersigned persons who presently are shareholders of L.I. REO TRUCK CO., INC., LIRCO ENTERPRISES, INC., LIRCO CREDIT CORP., TROJAN SERVICING CORP., INC., and LIRCO TRUCK LEASING CORP., all New York corporations (hereinafter "the corporations") and Glenn F. Kommer of Lansing, Michigan (hereinafter the "Trustee"),

WHEREAS, Thomas A. Vincel, Michael R. Vincel, Justina A. Vincel, Nuno Tardo, Irene Tardo, William E. Breen, Virginia Breen, Lirco Enterprises, Inc., J. F. O'Healy Construction Corp., Patrick Madden and Long Island Reo Truck Co., Inc. ("L.I. Reo" hereinafter) are shareholders of the various corporations subject to this Agreement, owning shares of voting stock in the amounts set forth in the schedule annexed hereto as Exhibit A; (hereinafter collectively referred to as "the signatories"); and

WHEREAS, each of the corporations are affiliated with L.I. Reo by reason of common stock ownership and by reason of the affiliation between the businesses conducted by each of the corporations; and

WHEREAS, the success of each of the corporations is dependent upon the continuity and stability of each of the other corporations; and

WHEREAS, L.I. Reo has for some time been a dealer of trucks manufactured by the Lansing Division of White Motor Corporation ("White" hereinafter) and has been the only such dealer in Queens, Nassau and Suffolk Counties, New York; and

WHEREAS, L.I. Reo has in the past financed its purchases of new and used trucks by using the facilities of Universal C.I.T. Credit Corporation ("C.I.T." hereinafter); and

WHEREAS, on December 27, 1962, White agreed to purchase such of L.I. Reo's "obligations" to C.I.T. in connection with such financing as were not met when due; and

WHEREAS, C.I.T. has, pursuant to White's aforesaid agreement, demanded that White purchase from C.I.T. all of L.I. Reo's "obligations" to C.I.T., and White has agreed to purchase such obligations; and

WHEREAS, L.I. Reo is presently indebted to White on an open parts account, upon which account is past due; and

WHEREAS, L.I. Reo and the signatories have requested that White forebear from presently demanding payment as the purchaser of L.I. Reo's obligations to C.I.T. and on the open parts account; and

WHEREAS, as of November 23, 1966 White, L.I. Reo and certain of the signatories executed an agreement relating to L.I. Reo's obligations to White (November Agreement) and one of the terms and conditions of said agreement was that the voting stock of all of the corporations be placed in a voting trust; and

WHEREAS, pursuant to the November Agreement and because the signatories desire to secure the continuity and stability of the management of the corporations, the Trustee has consented to act under this Agreement for the purposes herein provided,

NOW, THEREFORE, in consideration of the execution of the November Agreement and of the mutual covenants herein contained, and other good and valuable considerations, it is agreed by and between the parties as follows:

1. Deposit of Share Certificates. The undersigned shareholders agree to deposit with the Trustee certificates representing the shares of voting stock of the corporations set forth in the schedule annexed as Exhibit A. Such certificates shall be duly endorsed for transfer to the Trustee with appropriate tax stamps affixed. After receipt of said certificates, they shall be surrendered by the Trustee to the various corporations and

cancelled and new certificates therefor shall be issued and held by the Trustee in the name of "Glenn F. Kommer as Voting Trustee pursuant to Agreement dated December 19, 1960". Promptly thereafter, the Trustee shall issue and deliver to the undersigned shareholders Voting Trust Certificates for the shares of voting stock of each of the corporations so deposited with him.

2. Form of Voting Trust Certificate. Voting Trust Certificate to be issued and delivered by the Trustee, with respect to each of the corporations above referred to in the first paragraph on page 1 of this Agreement shall be substantially in the form annexed hereto as Exhibit B.

3. Dividends, etc. During the term of this Agreement, no dividends or other distributions shall be declared or paid by any of the corporations.

4. Dissolution, etc. The Trustee agrees that during the term of this Agreement, he will not cause any of the corporations to be dissolved or totally or partially liquidated without having received the prior written consent of the signatories. In the event of the dissolution or total or partial liquidation of any of the corporations, whether voluntary or involuntary, the Trustee shall receive the monies, securities, rights, or property to which the signatories are entitled, and shall distribute

the same among the registered holders of Voting Trust Certificates in proportion to their respective interests therein as shown on the books of the Trustee, and upon such distribution all further obligations of liability of the Trustee in respect of such monies, securities, rights or property so received shall cease.

5. Resignation, etc., of Trustee. The Trustee may at any time resign by mailing to the registered holders of the Voting Trust Certificates by Certified Mail, Return Receipt Requested, a written resignation to take effect thirty (30) days after date. White Motor Corporation shall have the right at any time hereafter to designate a Successor Trustee to succeed the Trustee effective upon such Trustee's resignation or death. The rights, powers and privileges of the Trustee named hereunder shall be possessed by each Successor Trustee. In the event the Successor Trustee named or appointed fails to accept the office of Trustee or in the absence of the appointment or designation of a successor of the then Trustee or in the event the Trustee or any Successor Trustee leaves White Motor Corporation's employ, White Motor Corporation shall have the power to appoint a Successor Trustee by serving upon the registered holders of the Voting Trust Certificates a written notice, by Certified Mail, return receipt requested, that it has appointed such Successor Trustee.

6. Trustee's Powers. The Trustee shall have the exclusive right to vote the shares deposited hereunder or to give written consent in lieu of voting thereon, subject to any limitation or right to vote contained in the Certificates of Incorporation of the corporations, as the same may have been amended, or other certificate filed pursuant to law, in person or by proxy at any and all meetings of the shareholders of the corporations involved, for whatsoever purpose called or held, and in any and all proceedings whether at meeting of the shareholders or otherwise, wherein the vote or written consent of shareholders may be required or authorized by law.

7. Offering of Shares. During the term of this Agreement, the corporations shall not offer or issue any shares of any type of stock in the corporations without the written consent of the Trustee and all holders of Voting Trust Certificates.

8. Trustee's Employment. It is understood and agreed that the Trustee may cause L.I. Reo's Board of Directors to appoint a person acceptable to him to act as L.I. Reo's General Manager, whose salary shall be paid by the Trustee. L.I. Reo agrees to reimburse the Trustee for said General Manager's salary in the amount of $8,400 per annum, or such lesser amount if his salary shall be less.

9. Capital Loan. It is agreed that in the event L.I. Reo obtains a working capital loan of $50,000 and

in the event that one of the conditions of said loan is that a majority of the voting stock of Lirco Enterprises, Inc. be used as collateral and be placed in a voting trust to be controlled by the lender, then the Trustee agrees that this Agreement shall be terminated in so far as it relates to so much of the Voting Stock of Lirco Enterprises, Inc. as is necessary to comply with said condition, only, and that he will take all steps necessary to accomplish the transfer of the shares of Lirco Enterprises, Inc. deposited hereunder to said financial institution, provided, however, that Lirco Enterprises, Inc. has previously agreed, in writing, to reduce the total rent paid by L.I. Reo to it under leases covering properties in Woodside and Happaugue, New York to a maximum aggregate rental on all such properties of $3,000 per month for a period equal to the term of this Agreement, and subject to any increases in taxes and assessments pursuant to the terms of said leases.

10. Shareholders' actions. During the term of this Agreement, the shareholders executing this Agreement and those shareholders and corporations who consent to its execution by executing a separate instrument at the foot of this Agreement, agree that they will not take any steps to file a petition in bankruptcy or reorganization against L.I. Reo, or to file a petition requesting an assignment for the benefit of creditors of L.I. Reo or to request any court to take any other action for the relief of debtors or benefit of creditors.

11. Term of Agreement. This Agreement shall become effective upon the date hereof and shall terminate on the date when L.I. Reo Truck Co., Inc. has fully paid the note described in Paragraph 5 of its agreement with White dated as of November 23, 1966, the note described in Paragraph 6 of the same agreement and L.I. Reo Truck Co., Inc. has satisfied all of its obligations to White Motor Corporation as assignee of certain obligations of L.I. Reo to C.I.T. which are referred to in Paragraph 2 of the same agreement.

12. Death of Holder. Upon the death of any registered holder of Voting Trust Certificates subject to this Agreement, the Trustee shall cause the shares held by him for the benefit of such deceased holder to be transferred to his legal representatives, heirs, successors or assigns, as the case may be, upon surrender of the Voting Trust Certificates registered in such decedent's name duly endorsed for surrender and cancellation to the Trustee.

13. Trustee's Compensation, etc. The Trustee shall serve without compensation. The Trustee shall have the right to incur and pay such reasonable expenses and charges and to employ such professional counsel as he may deem necessary and proper in the performance of his duties hereunder and any such charges or expenses incurred shall be charged to the corporation receiving the benefit thereof.

14. No Liability. Neither the Trustee, any person employed pursuant to paragraph 8 of this Agreement, nor his respective successors shall be liable by reason of any matter or thing in any way arising out of or in relation to this Agreement except for such loss or damage as the Voting Trust Certificate holders may suffer by reason of his willful misfeasance or gross negligence and no Trustee acting hereunder shall be required to give a bond or other security for the faithful performance of his duties as such.

15. Trustee's Relationship. Nothing herein contained shall disqualify the Trustee, or Successor Trustee or any person employed pursuant to paragraph 8 of this Agreement, from being an employee, officer or director of White Motor Corporation nor shall any transaction or contract between the various corporations above referred to in the first paragraph on page 1 of this Agreement and White Motor Corporation be affected or invalidated by reason of the fact that White is in any way interested in such transaction or contract.

16. Withdrawal of Shares. Except in the event of death as hereinbefore provided, none of the undersigned shareholders shall have the right to withdraw any shares deposited hereunder without the prior written consent of the Trustee.

17. Notice of Possible Action by Trustee. It is expressly understood and agreed that in the event L.I. Reo does not obtain the $50,000 working capital loan referred to in Paragraph 9 above, the Trustee may sell and lease back or otherwise encumber the assets of Lirco Enterprises, Inc. or encumber the stock of Lirco Enterprises, Inc. deposited hereunder in order to obtain for L.I. Reo Truck Co., Inc. a working capital loan of $50,000. This paragraph is inserted in this Agreement merely for purposes of notifying all parties hereto that the Trustee may so act and the inclusion of this paragraph in this Agreement shall not be deemed to be a limitation of the powers of the Trustee.

18. Agreement of Other Shareholders. It is expressly understood and agreed that this Agreement may be declared to be null and void ab initio by the Trustee if persons holding at least the following percentages of stock of any class does not consent to the execution of the Agreement by the signatory shareholders and do not specifically agree to be bound by the provisions of Paragraphs 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 17 of this Agreement by executing the "Consent and Agreement, etc." that appears at the foot of this Agreement and each of the corporations listed below does not sign the "Consent and Release by Subject Corporations" also appearing at the foot of this Agreement.

Name of Corporation	Percentage Required
Long Island Reo Truck Co., Inc.	100%
Lirco Enterprises, Inc.	100%
Lirco Credit Corp.	100%
Trojan Servicing Corp., Inc.	100%
Lirco Truck Leasing Corp.	100%

19. Miscellaneous.

(a) This Agreement may be executed in counterparts and each shall be deemed to be an original.

(b) This Agreement expresses the entire agreement between the parties and may not be changed or modified except by a writing executed by the Trustee and the signatories.

(c) Any notice to or communication with the holders of the Voting Trust Certificates shall be deemed sufficiencly given or made if addressed to the shareholders as appearing on the books of the Trustee. Any notice to the Trustee hereunder shall be sent to him c/o White Motor Corporation, 1331 So. Washington Avenue, Lansing, Michigan, by Certified Air Mail, Return Receipt Requested.

(d) This Agreement is intended by the parties to be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned shareholders have executed this Agreement / and the Trustee has executed this Agreement all as of the day and year first above written.

Glenn R. Kommer, Trustee

Michael R. Vincel

Justine A. Vincel

59A

Thomas A. Vincel

Nuno Tardo

Irene Tardo

William E. Breen

Virginia Breen

J. F. O'HEALY CONSTRUCTION CORP.

Attest:

By

Sec.

Attest:

Sec.

LONG ISLAND REO TRUCK CO., INC.

By

Attest:

Sec.

LIRCO ENTERPRISES, INC.

By

CONSENT AND AGREEMENT
OF NON-SIGNATORY SHAREHOLDERS

The undersigned, owning the amounts of stock of the various corporations set forth next to their names on the schedule annexed hereto as Exhibit C, acknowledge that they have read the foregoing Voting Trust Agreement and, in consideration of the agreements of the Trustee

therein contained, agree that the signatory-shareholders, without liability to themselves, the various corporations, White Motor Corporation and the Trustee may enter into said Agreement. The undersigned also agree to be bound by and adopt as their own agreements the terms of Paragraphs 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 17 of the aforesaid Voting Trust Agreement.

Henry R. Lanz

Leon Maganza

Joseph Rumano

Rolf Hoeger

M. C. Aiello

P. Aiello

Lillian A. Healy

Marion Lanz

Grace Walter

52A

CONSENT AND RELEASE BY SUBJECT CORPORATIONS

The undersigned corporations, being the corporations issuing the stock subject to the annexed Agreement, represent that the Board of Directors and shareholders have duly and validly approved the execution of the annexed Agreement by their shareholders and this "Consent, etc." by the corporations and in consideration of the agreements of the Trustee therein contained agree that the signatory-shareholders may, without liability to themselves and the Trustee enter into said Agreement. Each of the undersigned corporations also agrees that in the event 100% of the shareholders holding any class of stock are not either signatories of the Agreement or of the "Consent and Agreement, etc." which appears immediately above this paragraph, each of them will, jointly and severally indemnify and hold the Trustee, any Successor Trustee, any person employed pursuant to paragraph 8 of the Agreement and White Motor Corporation, their successors and assigns, harmless from any judgments which may be entered against them, or any of them, in any action or proceeding instituted against them, or any of them, by any of this Corporation's shareholders who have not signed either the Agreement above referred to or the "Consent and Agreement of Non-Signatory Shareholders" above set forth, with respect to any causes of action, claims or demands which they would have been barred from asserting if they had signed the aforesaid documents and from the cost of the reasonable attorneys' fees and costs incurred in the defense of such actions or proceedings.

Attest:

LONG ISLAND REO TRUCK CO., INC.

By

Sec.

Pres.

LIRCO ENTERPRISES, INC.

Attest:

By

LIRCO CREDIT CORP.

Attest:

By

TROJAN SERVICING CORP.

Attest:

By

LIRCO TRUCK LEASING CORP.

Attest:

By

EXHIBIT A - 54A

Long Island Reo Truck Co., Inc.

Name	No. of Shares*
Thomas A. Vincel	29.53
Nuno Tardo	8.33
William E. Breen	8.33

* Class A Stock

Lirco Enterprises, Inc.

Name	No. of Shares
Virginia Breen	1-1/2
Long Island Reo Truck Co., Inc.	10-9/10
Irene Tardo	1-13/15
Michael R. Vincel	1-3/4
Thomas A. Vincel	2-29/60
Justina A. Vincel	4

Lirco Credit Corp.

Name	No. of Shares
Lirco Enterprises, Inc.	2
Nuno Tardo	2
Thomas A. Vincel	11
J.F. O'Healy Construction Corp.	20

EXHIBIT A
(continued)

Trojan Servicing Corp.

Name	No. of Shares
Long Island Reo Truck Co., Inc.	50

Lirco Truck Leasing Corp.

Name	No. of Shares
Long Island Reo Truck Co., Inc.	3

EXHIBIT B - 56A

(name of corporation)
A New York Corporation

VOTING TRUST CERTIFICATE

This certifies that _____ has deposited _____ shares, par value _____ Dollar(s) ($) per share, of the stock of _____, a New York corporation, with the undersigned Trustee pursuant to a Voting Trust Agreement dated _____, 196 between Glenn F. Kommer, as Trustee, and certain shareholders of said corporation, a copy of which Voting Trust Agreement is on file in the office of the corporation, _____, _____, New York. This certificate and the interest represented thereby is transferable on the books of said Trustee and upon its surrender properly endorsed only upon the death of the holder. The holder of this Certificate takes the same subject to all the terms and conditions of the aforesaid Voting Trust Agreement and by acceptance of this Certificate acknowledges that receipt of the same is for investment purposes and not with a view to distribution.

IN WITNESS WHEREOF, the Trustee has signed this Certificate on _____, 196 .

_____
Glenn F. Kommer, Trustee

EXHIBIT C - 57A

Long Island Reo Truck Co., Inc.

Name	No. of Shares	
	Class A	Class B
Leon Maganza	5*	2*
Joseph Rummo	2	-
Rolf Hoeger	1	-
M.C. Aiello and P. Aiello	-	2
Grace Walter, now Grace Vincel	-	1

* Sold to Thomas A. Vincel, Nuno Tardo and William E. Breen August 30, 1966, with stock certificates held in escrow as security for payment of purchase price in installments, pending payment in full, pursuant to agreement dated August 30, 1966.

Lirco Enterprises, Inc.

Name	No. of Shares
Lillian A. Healy	7
Marion F. and Henry Lanz, Jointly	2
Patrick Madden	3-1/2

Lirco Credit Corp.

Name	No. of Shares
Grace Walter, now Grace Vincel	1

STATE OF NEW YORK)
: SS.: - 58A
COUNTY OF New York)

On the 23rd day of November 1966 before me personally came THOMAS A. VINCEL to me known, who, being by me duly sworn, did depose and say that he resides at No. 39-19 218th St., Bayside, Queens, New York, that he is the President of Long Island Reo Truck, Inc. the corporation described in, and which executed, the foregoing Voting Trust Agreement; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-0170 77, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF FLORIDA)
SS.:
COUNTY OF MARTIN)

59A

On the 12th day of December, 1966, before me personally came Justina A. Vincel, to me known and known to me to be the individual described in and who executed the foregoing agreement and duly acknowledged to me that she executed the same.

Notary Public
NOTARY PUBLIC, STATE OF FLORIDA at LARGE
MY COMMISSION EXPIRES SEPT. 27, 1969
BONDED THROUGH FRED W. DIESTELHORST

STATE OF NEW YORK)
Michigan
SS.:
COUNTY OF Ingham)

— 60A

On the 29th day of November, 1966 before me personally came Glenn F. Kommer to me known, and known to me to be the individual described in, and who executed the foregoing Voting Trust Agreement, and duly acknowledged to me that he executed the same.

Richard A. Hempsted

RICHARD A. HEMPSTED
Notary Public, Ingham County, Mich.
My Commission Expires Oct. 6, 1969

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On the 23rd day of November, 1966 before me personally came Michael R. Vincel, Nuno Tardo and William E. Breen to me known, and known to me to be the individuals described in, and who executed the foregoing Voting Trust Agreement, and duly acknowledged to me that they executed the same.

John S. Pyne Jr.

JOHN S. PYNE, JR.
Notary Public, State of New York
No. 24-0170170, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On the 25th day of November, 1966 before me personally came Irene Tardo and Virginia Breen to me known, and known to me to be the individuals described in, and who executed the foregoing Voting Trust Agreement, and duly acknowledged to me that they executed the same.

John S. Pyne Jr.

JOHN S. PYNE, JR.
Notary Public, State of New York
No. 24-0170170, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
: SS.: 61A
COUNTY OF)

On the day of November 1966 before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the President of J. F. O'Healy Construction Corp. the corporation described in, and which executed, the foregoing Voting Trust Agreement; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

J. F. O'Healy

Ethel W. Birch

ETHEL W. BIRCH
NOTARY PUBLIC, State of New York
No. 52 0280200
Qualified in Suffolk County
Certificate Filed in Nassau County
Commission Expires March 30, 1967

STATE OF NEW YORK)
: SS.: - 62A
COUNTY OF New York)

On the 23rd day of November, 1966 before me personally came THOMAS A. VINCEL to me known, who being by me duly sworn, did depose and say that he resides at No. 39-19 218th St., Bayside, Queens, New York, that he is the President of Long Island Reo Truck Co., Inc., the corporation described in, and which executed, the foregoing "Consent and Release by Subject Corporations"; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

John S. Pyne Jr.

JOHN S. PYNE, JR.
Notary Public, State of New York
No. 24-0116170, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
: SS.:
COUNTY OF New York)

63A

On the 23rd day of November, 1966 before me personally came THOMAS A. VINCEL to me known, who, being by me duly sworn, did depose and say that he resides at No. 39-19 218th St., Bayside, Queens, New York, that he is the President of Lirco Enterprises, Inc. the corporation described in, and which executed, the foregoing "Consent and Release by Subject Corporations"; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name by like order.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3179270, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
: SS.:
COUNTY OF New York)

64A

On the 23rd day of November 1966 before me personally came THOMAS A. VINCEL to me known, who, being by me duly sworn, did depose and say that he resides at No. 39-19 218th Street, Bayside, Queens, New York, that he is the President of Linco Credit Corp., Inc. the corporation described in, and which executed, the foregoing "Consent and Release by Subject Corporations"; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170-70, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
: SS.:
COUNTY OF New York)

65A

On the 23rd day of November, 1966 before me personally came NUNO TARDO to me known, who being by me duly sworn, did depose and say that he resides at No. 1054 Maple Lane, New Hyde Park, New York, that he is the President of Trojan Servicing Corp., the corporation described in, and which executed, the foregoing "Consent and Release by Subject Corporations"; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170.75, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
: ss.:
COUNTY OF New York)

66A

On the 22nd day of November 1966 before me personally came THOMAS A. VINCEL to me known, who being by me duly sworn, did depose and say that he resides at No. 39-19 218th St., Bayside, Queens, New York, that he is the President of Lined Truck Leasing Corp. the corporation described in, and which executed, the foregoing "Consent and Release by Subject Corporations"; that he knows the seal of said corporation; that the seal affixed to said Voting Trust Agreement is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3179170, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On the 23rd day of November, 1966 before me personally came Henry R. Lanz to me known, and known to me to be the individual described in, and who executed the foregoing "Consent and Agreement of Non-Signatory Shareholders", and duly acknowledged to me that he executed the same.

John S. Pyke Jr.
JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170370, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On the 25th day of November, 1966 before me personally came Grace Vincel, formerly Grace Walter, to me known, and known to me to be the individual described in, and who executed the foregoing "Consent and Agreement of Non-Signatory Shareholders", and duly acknowledged to me that she executed the same.

John S. Pyke Jr.
JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170370, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

STATE OF NEW YORK)
COUNTY OF Queens) SS.:

On the day of November, 1966 before me personally came Joseph Rummo, Ralph Hoeger, M.C. Aiello, P. Aiello, Lillian A. Healy and Patrick Madden to me known, and known to me to be the individuals described in, and who executed the foregoing "Consent and Agreement of Non-Signatory Shareholders", and duly acknowledged to me that they executed the same.

Ralph Hoeger

Dated at Woodside N.Y.
Dec. 14, 1966
Alexander Papa

Patsy Aiello

Joseph Rummo

The signature of the foregoing was made on this document in my name.

Lillian A. Healy

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On the 16th day of December, 1966 before me personally came Marion F. Lanz to me known, and known to me to be the individual described in, and who executed the foregoing "Consent and Agreement of Non-Signatory Shareholders" and duly acknowledged to me that she executed the same.

John S. Pyke Jr.

JOHN S. PYKE, JR.
Notary Public, State of New York
No. 24-3170370, Qualified in Kings Co.
Cert. Filed in New York County
Commission Expires March 30, 1967

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

— 70A

THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO and LIRCO CREDIT CORP.,	69 Civil 753
Plaintiffs,	DEFENDANTS' ANSWER, DEFENSES AND COUNTERCLAIMS
-against-	
WHITE MOTOR CORPORATION and GLENN F. KOMMER,	
Defendants.	

Defendants WHITE MOTOR CORPORATION and GLENN F. KOMMER, by their attorneys, Reavis & McGrath, for their answer to the FIRST, SECOND, THIRD, FIFTH and SIXTH CAUSES OF ACTION and for their defenses and counterclaims, respectfully allege:

ANSWERING THE FIRST CAUSE OF ACTION

1. State that they lack knowledge or information sufficient to form a belief as to the allegations of paragraphs "3" and "23".

2. Deny each and every allegation contained in paragraphs "1", "14", "15", "17", "21", "22", "24", "25", "26", "27", "30", "31" and "33".

3. State that they lack knowledge or information sufficient to form a belief as to the allegations of the first sentence of paragraph "4"; admit the allegations of the second sentence of said paragraph.

4. Answering paragraph "6", admit that White Motor Corporation ("White Motor") is licensed to do business in the State of New York; that it maintains an office for the transaction of business in the State of New York; that through its officers, employees and agents transacts business in the State of New York; and that it derives revenue from the sale of motor vehicles, parts and service in the State of New York; and except as admitted herein, deny each and every allegation of said paragraph.

5. Answering paragraph "7", admit that Glenn F. Kommer was an employee of White Motor and was treasurer of the Lansing Division of White Motor, the name of which was changed to Diamond Reo Division on May 1, 1967, and except as expressly admitted herein, deny each and every allegation of said paragraph.

6. Answering paragraph "8", admit that Glenn F. Kommer was the Voting Trustee designated by White Motor pursuant to an agreement between White Motor and plaintiffs Thomas A. Vincel, Nuno Tardo and William Breen and dated November 24, 1966 (referred to in the complaint as the "Financing Agreement") and respectfully refer this Court to the agreement for its terms, and except as admitted herein, deny each and every allegation of said paragraph.

7. Answering paragraph "13", admit the allegations of the first sentence; admit that L.I.Reo was a dealer in Reo and Diamond-Reo Trucks; and except as expressly admitted deny each and every allegation of the second sentence of said paragraph.

8. Answering paragraph "16", admit the execution of the Financing Agreement referred to therein and respectfully refer the Court to its terms, and except as admitted herein, deny each and every allegation of said paragraph.

9. Answering paragraph "20", admit that Glenn F. Kommer, as Voting Trustee, selected Samuel Antelis to be General Manager of L. I. Reo; state that they lack knowledge or information sufficient to form a belief as to what action L. I. Reo's Board of Directors took; and except as admitted or referred to herein, deny each and every other allegation in said paragraph.

10. Answering paragraph "28", deny each and every allegation contained in the last sentence; state that they lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of said paragraph.

11. Answering paragraph "29", admit that pursuant to its various franchise agreements with White Motor or its divisions,

L. I. Reo purchased trucks and parts from White Motor, and except as expressly admitted herein, deny each and every allegation contained in said paragraph.

12. Answering paragraph "32", admit that the agreements referred to were prepared in New York, and except as admitted, deny each and every allegation contained in said paragraph.

ANSWERING THE SECOND CAUSE OF ACTION

13. Answering paragraph "35", repeat and reallege each and every allegation contained in paragraphs "1" through and including "12", above, as if fully set forth and rewritten herein.

14. Deny each and every allegation contained in paragraphs "36", "37" and "38".

ANSWERING THE THIRD CAUSE OF ACTION

15. Answering paragraph "39", repeat and reallege each and every allegation contained in paragraph "1" through and including "12", above, as if fully set forth and rewritten herein.

16. Deny each and every allegation contained in paragraphs "40", "41", "42" and "43".

ANSWERING THE FIFTH CAUSE OF ACTION

17. Answering paragraph "49", repeat and reallege each and every allegation contained in paragraphs "1" through and including "12", "14" and "16", above, as if fully set forth and rewritten herein.

18. Deny each and every allegation contained in paragraphs "50", "51" and "52".

ANSWERING THE SIXTH CAUSE OF ACTION

19. Answering paragraph "53", repeat and reallege each and every allegation contained in paragraphs "1" through and including "12", "14" and "16", above, as if they were fully rewritten herein, and deny the allegations of paragraphs "45" and "46" of the complaint as they are incorporated in paragraph "53".

20. Deny each and every allegation contained in paragraphs "54" and "55".

FIRST DEFENSE BY BOTH DEFENDANTS

21. Each of the causes of action fails to state a claim upon which relief can be granted.

SECOND DEFENSE BY BOTH DEFENDANTS

22. Plaintiffs have failed to properly join as a party-plaintiff in this action Long Island Diamond Reo Truck Co., Inc.

THIRD DEFENSE BY BOTH DEFENDANTS

23. Plaintiffs do not have the capacity to sue on the causes of action alleged.

FOURTH DEFENSE BY WHITE MOTOR CORPORATION

24. On or about December 21, 1967, Long Island Diamond Reo Truck Co., Inc. filed a petition in bankruptcy under the federal bankruptcy statutes, in this District.

25. On August 27, 1968, pursuant to the authority vested in him by the statutes of the United States, Honorable Sherman D. Warner, Referee in Bankruptcy of the United States District Court for the Eastern District of New York, signed an Order, after a hearing at which plaintiff Vincel appeared in opposition, approving the compromise of a counterclaim interposed by the Trustee in Bankruptcy for Long Island Diamond Reo Truck Co., Inc. against White Motor Corporation in a proceeding in said Court entitled "In the Matter of Long Island Diamond Reo Truck Corp., Index Number 67B-1451". (A copy of said counterclaim is annexed hereto as Exhibit "A" and a copy of said Order is annexed hereto as Exhibit "B").

26. The claim interposed by the said Trustee in Bankruptcy arose out of and encompassed all of the acts and transactions upon which the instant plaintiffs sue herein as shareholder of Long Island Diamond Reo Truck Co., Inc.

27. No petition to review or appeal was taken from the aforesaid Order of the Referee and the compromise was consummated.

28. By reason of the aforesaid, plaintiffs are barred and estopped from maintaining the instant action.

FIFTH DEFENSE BY WHITE MOTOR CORPORATION
AND FOURTH DEFENSE BY GLENN F. KOMMER

29. Defendants repeat and reallege each and every allegation contained in paragraphs "24", "25","26" and "27", above, as if fully set forth and rewritten herein.

30. Pursuant to the aforesaid Order, on September 30, 1968, the Trustee in Bankruptcy of Long Island Diamond Reo Truck Co., Inc. released and discharged White Motor Corporation and Glenn F. Kommer, from all claims, rights, demands, or causes of actions against White Motor Corporation and Glenn F. Kommer which the Trustee of Long Island Diamond Reo Truck Co., Inc. then had or may have. (A copy of said release is annexed hereto as Exhibit "C").

31. The aforesaid release was approved by the Referee in Bankruptcy on October 3, 1968.

32. By reason of the aforesaid, plaintiffs are barred from maintaining the instant action.

SIXTH DEFENSE BY WHITE MOTOR CORPORATION
AND FIFTH DEFENSE BY GLENN F. KOMMER

33. On or about October 16, 1967, Long Island Diamond Reo Truck Co., Inc. and Thomas A. Vincel interposed counterclaims

against White Motor Corporation and Glenn F. Kommer in an action commenced by White Motor Corporation in Supreme Court of the State of New York, County of New York (entitled "White Motor Corporation, Plaintiff, against Long Island Diamond Reo Truck, Co., Inc. and Thomas A. Vincel, Defendants, and Glenn F. Kommer, Defendant to Counterclaim (Index Number 14135/1967)"). (A copy of said counterclaim is annexed hereto as Exhibit "D".)

34. The aforesaid counterclaims arose out of and encompassed all of the same acts and transactions upon which the instant plaintiffs sue herein as shareholders of Long Island Diamond Reo Truck Co., Inc.

35. On August 28, 1968, the Honorable Sherman D. Warner, Referee in Bankruptcy of the United States District Court for the Eastern District of New York, in a proceeding entitled "In the Matter of Long Island Diamond Reo Truck Corp. Index No. 67 B 1451" ordered that the Trustee for the aforesaid bankrupt enter his appearance in the action described in paragraph "33", above. (A copy of said Order is annexed hereto as Exhibit "E").

36. On September 25, 1967, the Trustee stipulated and agreed that the counterclaims in the action described in paragraph "33", above, be discontinued with prejudice. (A copy of said stipulation is annexed hereto as Exhibit "F").

37. By reason of the aforesaid, plaintiffs are barred from maintaining the instant action.

SIXTH DEFENSE ON BEHALF OF GLENN F. KOMMER

38. This Court lacks jurisdiction of the person of Glenn F. Kommer.

FIRST COUNTERCLAIM ON BEHALF OF
DEFENDANT WHITE MOTOR CORPORATION
AGAINST PLAINTIFF THOMAS A. VINCEL

39. This counterclaim involves in excess of $10,000, exclusive of interest and costs. The jurisdiction of this counterclaim is founded upon the diverse citizenship of the parties.

40. At all times hereinafter mentioned White Motor Corporation ("White") was a corporation organized and existing under the laws of the State of Ohio and maintained its principal place of business in the State of Ohio.

41. On information and belief, at all times hereinafter mentioned Long Island Diamond Reo Truck Co., Inc. a/k/a Long Island Reo Truck Co., Inc. ("L. I. Reo") was a corporation organized and existing under the laws of the State of New York.

42. At all times hereinafter mentioned, Thomas A. Vincel ("Vincel") was President of L. I. Reo, its principal stockholder [and the person who controlled and dominated its affairs and operations.] On information and belief, Vincel is a resident of the State of New York and of this district.

43. On or about August 28, 1964, L. I. Reo made, executed and delivered to Universal C.I.T. Corporation ("C.I.T.") a certain agreement of financing relating to the financing, by C.I.T., of the purchases of trucks by L.I. Reo.

44. At various times, L. I. Reo made, executed and delivered to C.I.T. certain chattel mortgages and trust receipts in connection with certain motor vehicles L. I. Reo purchased and C.I.T. financed for L.I. Reo pursuant to said agreement of financing.

45. In October of 1966, C.I.T. discovered that L.I. Reo had sold "out of trust" and without paying C.I.T. therefor, certain vehicles which had been financed by C.I.T. White had guaranteed to C.I.T. the repayment of all of L. I. Reo's indebtedness to White and C.I.T. demanded, upon discovering such facts, that White pay it $264,994.98 which was then owed by L. I. Reo to C.I.T.

46. White is the assignee of certain trust receipts, chattel mortgages and the agreement of financing entered into between L. I. Reo and C.I.T. On or about November 3, 1966, C.I.T. duly sold and assigned to White all of its right, title and interest in and to said trust receipts, chattel mortgages and the agreement of financing. White paid C.I.T. $264,994.98 for said assignments.

47. a) On or about November 28, 1966, White and L. I. Reo entered into an agreement, a copy of which is annexed to the complaint as Exhibit "A" and L. I. Reo executed a promissory note of even date in White's favor. [There is now due and owing $110,294.15, plus interest, on said promissory note.]

47. b) On or about February 20, 1967, L. I. Reo executed in White's favor a promissory note in the amount of $42,739.56, no part of which has been paid.

48. Vincel, on or about November 23, 1966, guaranteed to White the payment of the promissory note described in paragraph "47(a)", above, and on or about February 20, 1967, guaranteed the payment of the promissory note described in paragraph "47(b)", above.

49. There is now due and owing by L. I. Reo $153,033.71, plus interest, on said promissory notes.

50. By reason of the aforesaid, Vincel is indebted to White in the sum of $153,033.71, plus interest as provided in said notes, no part of which has been paid.

SECOND COUNTERCLAIM BY DEFENDANT
WHITE MOTOR CORPORATION AGAINST
PLAINTIFF THOMAS A. VINCEL

51. White Motor Corporation ("White") repeats and realleges each and every allegation contained in paragraphs "39", "40", "41", "42", "43", "44", "45", "46", "47", and "48", above, as if fully set forth and rewritten herein.

52. Pursuant to the agreement referred to in paragraph "47(a)", above, White entered into two agreements with L. I. Reo dated February 21, 1967, which are referred to as the "Security Agreement" and the "Consignment Agreement".

53. Pursuant to the aforesaid "Consignment Agreement" and the agreement referred to in paragraph "47(a)", above, the following vehicles, manufactured by White, were the sole property of White:

D 8

MAKE	SERIAL #	MODEL	VALUE OF VEHICLE
Diamond-Reo	571818	C9042	$ 8,256.66
Diamond-Reo	571799	C101644D	14,122.16
Diamond-Reo	572067	C10142	7,145.39
Diamond-Reo	572179	C10142D	11,760.61
Diamond-Reo	571914	GH830DB-OH	17,399.76
Diamond-Reo	571883	C9042	8,667.02
Diamond-Reo	572063	C10164	11,635.26
Diamond-Reo	571954	C10142D	11,972.91

54. Pursuant to the "Security Agreement" and the agreement referred to in paragraph "43" above and the promissory notes referred to in paragraph "47", above, the following vehicles were security for the debt of L. I. Reo to White:

D 8

MAKE	SERIAL #	MODEL	VALUE OF VEHICLE
Reo	567388	E830-67	$10,000.00
Reo	565504	CH1703DF	14,100.08
Reo	567969	E530	10,817.95

55. On information and belief, from on and after November 1, 1967, Vincel willfully and maliciously and for the purpose of injuring White and its assignor converted the motor vehicles described in paragraphs "53" and "54", above, and others, by causing said motor vehicles to be sold or otherwise transferred and by retaining the proceeds for himself or entities associated with him and by not transmitting the proceeds to White or its assignor as provided for in the various agreements described above.

D 8

56. The total value of the motor vehicles described in paragraphs "53" and "54", above, was $125,877.80. Although White has duly demanded the return of the aforesaid motor vehicles or the cash equivalent, they have not been returned.

57. On information, the aforesaid acts of Vincel were in violation of the Penal Law of the State of New York.

58. By reason of the aforesaid, White has been damaged by Vincel in the sum of $125,877.80.

SEVENTH DEFENSE AND THIRD COUNTERCLAIM ON BEHALF OF DEFENDANT WHITE MOTOR CORPORATION AGAINST PLAINTIFFS THOMAS A. VINCEL, NUNO TARDO AND WILLIAM BREEN

59. White Motor Corporation ("White") repeats and realleges each and every allegation of paragraphs "39", "40", "41", "42", "43", "44", "45", "46" and "47 (a)", above, as if fully set forth and rewritten herein.

60. Prior to November 20, 1966, in the presence of and without objection from plaintiffs Nuno Tardo and William Breen, Vincel represented to White and Glenn F. Kommer in order to induce White to enter into the agreement and accept the note described in paragraph "47 (a)", above, and to cause Glenn F. Kommer to be a Voting Trustee for certain of the stock of L. I. Reo and its affiliates, and to induce White not to demand immediate payment of the $459,832.55 due it by L. I. Reo, that Vincel had ceased and desisted from and would not thereafter transfer motor vehicle serial numbers from one vehicle to another and sell such vehicles and not pay for them.

61. The transferring of motor vehicle serial numbers from one vehicle to another was accomplished for the purpose of deceiving C.I.T. into believing that certain trucks, financed by C.I.T. had not been sold when in fact they were sold, but C.I.T. had not been paid.

D 10

62. On information and belief, the aforesaid representation was false in that during the period of negotiation of the agreement and promissory note described in paragraph "47 (a)", above, and at and prior to the time the representation was made and thereafter, Vincel engaged in one or more of the acts described in paragraphs "60" and "61", above.

D 10

63. In reliance upon the representations alleged in paragraph "60", White entered into the agreement and accepted the note described in paragraph "47 (a)", above.

D 10

64. Had White not relied upon the misrepresentations of Vincel, made in the presence of Nuno Tardo and William Breen, it would have demanded immediate payment of the $459,832.55 then owing it by L. I. Reo.

D 10

65. White relied upon the misrepresentation of Vincel to its damage and did not then take steps to enforce its rights to immediately recoup the monies owing it.

D 10

66. By reason of the aforesaid, White has been damaged in the sum of $459,832.55.

D 10

FOURTH COUNTERCLAIM BY DEFENDANT
WHITE MOTOR CORPORATION AGAINST
PLAINTIFF THOMAS A. VINCEL

67. White Motor Corporation ("White") repeats and realleges each and every allegation contained in paragraphs "39", "40", "41", "42", "43" and "44", and "46", above, as if fully set forth herein.

68. On or about June 28, 1966, L. I. Reo financed the purchase of Reo motor truck (model 703DR, serial number 565504) from White's assignor, C.I.T., and, on information and belief, C.I.T. paid to L. I. Reo or for its benefit the sum of $14,100.08.

69. On information and belief, on or about August 15, 1966, Thomas A. Vincel caused L. I. Reo to sell said truck to a corporation wholly owned by him named Lirco Truck Leasing Corp., for the sum of $17,100.08.

70. On information and belief, said motor vehicle and the proceeds of $17,100.08 of the sale of said motor truck were converted by Thomas A. Vincel to his own use or to the use of an entity associated with him, in violation of the rights of White's assignor, C.I.T.

71. On information and belief, the aforesaid acts of Thomas A. Vincel constituted a violation of the Penal Law of the State of New York.

72. By reason of the aforesaid, White has been damaged in the sum of $14,100.08.

FIFTH COUNTERCLAIM BY DEFENDANT
WHITE MOTOR CORPORATION AGAINST
PLAINTIFFS THOMAS A. VINCEL,
NUNO TARDO AND WILLIAM BREEN

Repeats 13

73. White Motor Corporation ("White") repeats and realleges each and every allegation contained in paragraphs "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "60", "61", "62" and "63", above, as if fully set forth and rewritten herein.

Rec'l 11

74. Pursuant to the agreement referred to in paragraph "47 (a)", above, and in reliance upon the representation alleged, White manufactured at L. I. Reo's request the eight (8) motor vehicles described in paragraph "53", above.

Rec'l 11

75. The wholesale value of said eight (8) vehicles was $86,959.77.

D 12

76. Had White Motor Corporation not relied upon the misrepresentations of Vincel alleged, it would not have manufactured and shipped to L. I. Reo the aforesaid eight (8) motor vehicles.

D 12

77. White Motor Corporation has not received payment of the wholesale value of said eight (8) motor vehicles of $86,959.77.

D 12

78. By reason of the aforesaid, White Motor Corporation has been damaged in the sum of $86,959.77.

WHEREFORE, judgment is requested as follows:

1. On behalf of defendants, dismissing the complaint;

2. On behalf of White Motor Corporation on its First Counterclaim against Thomas A. Vincel in the amount of $153,033.71;

3. On behalf of White Motor Corporation on its Second Counterclaim against Thomas A. Vincel in the amount of $125,877.80;

4. On behalf of White Motor Corporation on its Third Counterclaim against Thomas A. Vincel, Nuno Tardo and William Breen in the amount of $459,832.55;

5. On behalf of White Motor Corporation on its Fourth Counterclaim against Thomas A. Vincel in the amount of $14,100.08;

6. On behalf of White Motor Corporation on its Fifth Counterclaim against Thomas A. Vincel, Nuno Tardo and William Breen in the amount of $86,959.77;

7. Interest as provided by law on such money judgments as are awarded herein;

8. Defendants' costs and disbursements in the defense of this action and the prosecution of its counterclaims; and

9. Such other and further relief as may be proper in the premises.

New York, N.Y.

August 14, 1969

Yours, etc.,

REAVIS & McGRATH

By _____

Stephen R. Steinberg,
a member
Attorneys for Defendants
One Chase Manhattan Plaza
New York, N.Y. 10005
212-269-7600

DOCKETED

88A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter

of

LONG ISLAND DIAMOND REO TRUCK CORP., formerly known as LONG ISLAND REO TRUCK CO., INC.,

Bankrupt.

No. 67 B 1451

ANSWER AND OBJECTION TO CLAIM

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The answer of MITCHELL N. KAY, the trustee herein, by LOUIS P. ROSENBERG, his attorney, to the application of WHITE MOTOR CORPORATION to vacate the restraining provisions of the order dated December 21, 1967, and the objection to the proof of claim filed herein by WHITE MOTOR CORPORATION, in the sum of $321,610.14, respectfully alleges:

1. Admits that LONG ISLAND DIAMOND REO TRUCK CORP. (bankrupt) entered into agreements with WHITE MOTOR CORPORATION (claimant) dated November 23, 1966; security agreement dated February 21, 1967; and consignment agreement dated February 21, 1967, and from time to time delivered chattel mortgages, trust receipts and promissory notes to the claimant.

2. Denies that the bankrupt is indebted to the claimant in any amount but, on the contrary, because of the acts and conduct of the claimant in violation of its obligation to the bankrupt, resorted to certain practices calculated to and resulting in

EXH A

destruction of the bankrupt's operations and business and damages in the sum of $3,000,000.00.

DEFENSE AND COUNTERCLAIM

3. Claimant is engaged in the manufacture of trucks which it sells throughout the entire United States and in foreign countries and, in about June of 1957, acquired the assets of Reo Motors Inc., also a manufacturer of trucks, and in about April of 1968, acquired the inventory and assets of Diamond T Motor Car Co., also a manufacturer of trucks.

4. The bankrupt was a dealer in Reo trucks and parts under a franchise agreement with claimant, which franchise was subsequently extended so as to include Diamond motor trucks and parts.

5. The bankrupt entered into a financing agreement with claimant on or about November 23, 1966 and in connection therewith the bankrupt's stockholders were required to enter into a Voting Trust Agreement with Glenn F. Kommer, an officer of the claimant, whereby the stock was deposited with said trustee and which Voting Trust Agreement also vested with said trustee the right to have the bankrupt employ a general manager acceptable to said trustee.

6. Thereafter said trustee requested the bankrupt to

appoint Samuel Antelis to be general manager, who was acting under the direction and supervision of the claimant through its agents and representatives, and the claimant, through said Voting Trustee and the general manager dominated and controlled the financial affairs of the bankrupt.

7. That the financial affairs of the bankrupt, such as the receipt and collection of moneys and disbursements thereof was in the exclusive control of the general manager, claimant's designee, and the bankrupt, through its officers and stockholders, relied upon claimant's agents to conduct the financial affairs of the bankrupt in good faith and in its best interests.

8. That the claimant, through its agents, did not act in good faith and in the bankrupt's best interest but so conducted the financial affairs of the bankrupt so as to create technical or theoretical breaches so as to use those breaches as a basis for declaring a default and a premature termination of the agreements between the parties.

9. That claimant, through its agents and representatives, and with the intent and purpose to avoid its contractual and franchise obligations to the bankrupt and to destroy the bankrupt's business, did claim that its own acts and those of its agents, constituted breaches and defaults under its agreements with the

bankrupt and demanded full payment of moneys allegedly owing and also demanded possession of all trucks and parts owned and possessed by the bankrupt and claimant took steps to enforce said unwarranted demands, which resulted in the bankrupt being compelled to cease operations.

10. That claimant wilfully and unjustly instituted proceedings in the Supreme Court, New York County, and unilaterally obtained therefrom writs authorizing the Sheriff to seize and attach the bankrupt's property, thereby destroying the bankrupt's business, depriving it of the ability to continue operations, and making necessary resort to bankruptcy proceedings.

11. By reason of all of the foregoing the bankrupt is entitled to the return of all of the property that was seized by the Sheriff and damages in the sum of $3,000,000.00.

WHEREFORE, it is prayed that the application to vacate the stay be, in all respects, denied; that the proof of claim filed herein by the claimant in the sum of $321,610.14 be disallowed; and that judgment be entered on the counterclaim in favor of the trustee and the bankrupt estate; decreeing and adjudging that the assets seized by the Sheriff be returned to the bankrupt estate, and that the claimant be required to pay damages for its unlawful conduct and destruction of the bankrupt's business in the sum of $3,000,000.00.

Dated: March 29, 1968.

Louis P. Rosenberg
Attorney for Trustee
16 Court Street,
Brooklyn, N.Y. 11201

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of

LONG ISLAND DIAMOND REO TRUCK CORP., formerly known as LONG ISLAND REO TRUCK CO., INC.,

Bankrupt.

ORDER APPROVING COMPROMISE

67B1451

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An application having been presented to the Referee by the Trustee for authority to compromise the claim of the bankrupt against WHITE MOTOR CORPORATION ("White") and Glenn F. Kommer and White's claim filed in this proceeding pursuant to a written Offer of Settlement dated July 19, 1968 addressed to the attorney for the Trustee and transmitted to the Referee; and

A notice of the proposed compromise and the hearing thereon having been mailed by the Referee to all creditors listed on the petition filed by the bankrupt; and

A hearing having been had by the Referee on August 15, 1968 at which time there appeared Louis P. Rosenberg, Esq., attorney for the Trustee, Michael N. Kay, Trustee and attorney for a creditor, and Stephen R. Steinberg, Esq., attorney for White, all in favor of the proposed compromise; and Messrs. Rembar & Zolotar (Myron S. Isaacs, Esq., of counsel), attorney for the bankrupt, Messrs. Townsend & Lewis (by Eliot Lumbard, Esq., of counsel), a creditor, in opposition to the settlement; and

After hearing argument by all appearing and due deliberation having been had thereon, and the Referee having determined that the offer is fair and equitable to the bankrupt and its creditors;

NOW, on motion of Louis P. Rosenberg, Esq., attorney for the Trustee, it is hereby

EXH. B

ORDERED, that the Trustee is hereby authorized and directed to compromise the bankrupt's claim against White and Glenn F. Kommer and White's claim against the bankrupt on the following terms and conditions:

1. The Trustee shall receive from White a certified check in the amount of $100,000.00.

2. White shall withdraw its claim in this proceeding in the amount of $323,610.14 plus interest by filing in this Court a notice of withdrawal.

3. The Trustee shall discontinue with prejudice his counterclaim filed herein in the amount of $3,000,000.00.

4. The Trustee and White, or their attorneys, shall execute and file a stipulation of discontinuance, with prejudice, but without costs to either party, of an action now pending in the SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK, Index No. 14135/67, entitled: "WHITE MOTOR CORPORATION against LONG ISLAND DIAMOND REO TRUCK CO., INC., et ano, Defendants and GLENN F. KOMMER, Defendant on Counterclaim," ("Supreme Court action"). However, said stipulation shall not in any way affect the action of White Motor Corporation against Thomas A. Vincel and Thomas A. Vincel's defenses and counterclaims to said action.

5. White Motor Corporation and the Trustee or their attorneys are directed to do all things necessary to cause:

(a) The Sheriff of the City of New York, County of New York, to release to the Trustee, upon payment by the Trustee of said Sheriff's costs, fees and expenses of a sum of money in the approximate amount of $17,000.00 held by said Sheriff pursuant to an Order of Attachment entered in the Supreme Court action on September 1, 1967, and the Trustee shall pay to the Sheriff his costs, fees and expenses calculated on the total originally attached by the Sheriff.

(b) The Sheriff of the City of New York, Queens County, and the Sheriff of Suffolk County to release to White, upon payment by White of said Sheriff's costs, fees, expenses, and storage charges, certain personal property held by said Sheriffs pursuant to an Order of Attachment entered on September 1, 1967 in the Supreme Court action;

(c) The Attachment Bond and the Replevy Bond provided to the Sheriff of the City of New York and the Attachment Bond provided to the Sheriff of Suffolk County in the aforesaid action to be cancelled and all liability thereunder extinguished.

6. White shall deliver to the Trustee a covenant not to sue the Trustee or the bankrupt in connection with any matter or any claim asserted in the Supreme Court action or in this proceeding, reserving therein White's rights against Thomas A. Vincel in the Supreme Court action.

7. The Trustee shall deliver to White, its officers, directors and employees and Glenn F. Kramer and their heirs, administrators, executors and assigns, a General Release releasing said corporation and persons from all matters and claims of any nature whatsoever which the Trustee or the bankrupt have.

8. The Trustee shall deliver to White a Bill of Sale, the consideration for which shall be the compromise provided for herein, of all personal property released to White by the Sheriff of the City of New York and the Sheriff of Suffolk County.

9. The Trustee shall deliver to White an assignment and release of all the interest of the Trustee and the bankrupt in and to a reserve account in the approximate amount of $26,000 now held by Universal C.I.T. Credit Corporation in the name of the bankrupt.

10. The Trustee shall deliver to White such documents as are requested by White so that White can sell or license in any state all of the motor vehicles repossessed and replevied by White on or about August 26, 1967; and

IT IS FURTHER ORDERED, that in the event all of the stockholders of the bankrupt shall by September 15, 1968, deliver to the attorneys for White, their individual General Releases in favor of White, its directors, officers and employees and Glenn F. Kommer, and said persons and corporation's heirs, executors, administrators and assigns releasing them from any and all claims which said stockholders now have or may have against said persons and corporations, then White shall, within 15 days thereafter cause to be delivered to the attorney for the Trustee, on behalf of said stockholders, its equivalent General Release in favor of said stockholders. However, if said releases are not delivered as herein provided, such shall not affect all of the other terms and conditions of this Order and this Order shall remain and be in full force and effect, and

IT IS FURTHER ORDERED, that paragraph 1 of the Order entered herein on December 21, 1967 by Judge Jacob Mishler staying the Supreme Court action be and it is hereby dissolved, and

IT IS FURTHER ORDERED, that the Referee shall retain jurisdiction in connection with the within Compromise for the purpose of adjudicating any dispute which may arise in connection with any portion of this Order or the execution thereof.

Referee in Bankruptcy

Dated: Jamaica, New York
August , 1968

UNITED STATES DISTRICT COURT —
EASTERN DISTRICT OF NEW YORK

96A

In the Matter of

LONG ISLAND DIAMOND REO TRUCK CORP., formerly known as LONG ISLAND REO TRUCK CO. INC.

Bankrupt.

Supplementary Agreement pursuant to Order dt. Aug 27 - Approved 10/3/68

THIS AGREEMENT, made this 3rd day of September, 1968 by and between WHITE MOTOR CORPORATION, (hereinafter "White") an Ohio corporation with its principal office at 100 Erieview Plaza, Cleveland, Ohio on the one hand and MITCHELL N. KAY, as Trustee in Bankruptcy of Long Island Diamond Reo Truck Corp., a/k/a Long Island Diamond Reo Truck, Co., Inc., (hereinafter "Trustee" and "Corporation")

WHEREAS, White has commenced a suit in the Supreme Court of the State of New York for the County of New York, bearing Index No. 14135/1967, against corporation and Thomas A. Vincel, and said defendants have counterclaimed against White and Glenn F. Kommer; and

WHEREAS, corporate defendant filed a petition in bankruptcy in the United States District Court for the Eastern District of New York, White interposed a claim and Trustee counterclaimed; and

WHEREAS, Honorable Sherman D. Warner, Referee in Bankruptcy, on August 26, 1968, ordered that said claim and counterclaims be compromised by White and Trustee;

NOW THEREFORE, in consideration of the premises and other valuable considerations:

1) White hereby covenants and agrees to discontinue and not prosecute the aforesaid action as against Trustee and corporation reserving however the right to further prosecute the aforesaid action against Thomas A. Vincel and White further cove-

EXH C

nants and agrees that it will not henceforth commence or prosecute any other action, suit or proceeding, or otherwise sue or prosecute Trustee or corporation for chims, rights, demands or causes of action based on matters set forth in the Complaint in the aforesaid action or the coam filed in a bankruptcy proceeding now pending in the United States District Court, Eastern District of New York, bearing No. 67 B 1451, expressly excepting and reserving to White any action, causes of action, claims, rights or demands that White or its successors ca assigns, now has, or that it or they may hereafter bring or make, against any other person or category or person not herein named or referred to.

2) Trustee hereby releases and forever discharges White, its present and former officers, directors and employees and Glenn F. Kommer, their heirs, executors, administrators, successors or assigns from all claims, rights, demands or causes of actions which against White, its present and former officers, directors, and employees, and Glenn F. Kommer, their heirs, executors, administrators, successors and assigns Trustee or corporation now has or may have, for, upon or by reason of any matter, cause or thing, whatsoever, from the beginning of the world to the day of the date of this agreement.

3) Trustee hereby assigns to White all of his an corporations'right, title and interest in and to a reserve account now held by Universal C. I. T. Credit Corporation in the name of the bankrupt.

4) All rights of Trustee and corporation under the Attachment Bond and the Replevy Bond provided in the action described above, be and they hereby are cancelled and the Trustee releases White and the Sheriffoof the City of New York and the Sheriff of Suffolk County and the bonding company

providing said bonds, from all claims, demands and causes of action thereunder in connection with the Supreme Court action.

IN WITNESS WHEREOF, White and Trustee have hereunto set their hands and seals the day and year first above written.

WHITE MOTOR CORPORATION,

BY: C. E. Douglas
Treasurer

Mitchel N. Kay, Trustee

APPROVED:
Jamaica, New York
September 3, 1968

SHERMAN D. WARNER
Referee in Bankruptcy

STATE OF OHIO)
:ss.:
COUNTY OF CUYAHOGA)

On the 3rd day of September, 1968, before me personally came CLAUDE E. DOUGLAS, to me known, who, being by me duly sworn, did depose and say that he is the Treasurer of White Motor Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[illegible], Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE OF NEW YORK)
:ss.:
COUNTY OF [illegible])

On the 30th day of September, 1968, before me personally came MITCHELL N. KAY, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed same.

GEORGE J. SANDLER
NOTARY PUBLIC, State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

WHITE MOTOR CORPORATION,

Plaintiff

- against -

LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC. and THOMAS A. VINCEL,

Index No. 14135/1967

Defendants

GLENN F. KOMMER,

Additional Defendant on Counterclaim

----------X

AMENDED ANSWER AND COUNTERCLAIMS

Defendants, for their amended answer to the amended complaint and for their counterclaims, allege:

1. Defendants deny each and every allegation contained in paragraphs 8, 12(b), 14, 15, 16, 18, 21 and 25 of the amended complaint.

2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 4 and 12(a) of the amended complaint.

3. Admit that defendant LONG ISLAND DIAMOND REO TRUCK CO., INC. ("L.I. Reo") is a New York corporation, and that its name was formerly Long Island Reo Truck Co., Inc.; and otherwise deny each and every allegation contained in paragraph 2 of the amended complaint.

EXH D

4. Admit that Thomas A. Vincol was and is president and a stockholder of L. I. Reo; and otherwise deny each and every allegation contained in paragraph 3 of the amended complaint.

5. Admit that L. I. Reo entered into the following agreements mentioned in the amended complaint:

(a) Agreement dated August 28, 1964 with Universal C.I.T. Credit Corporation (Exhibit A);

(b) Agreement dated November 23, 1966 with plaintiff (Exhibit E);

(c) Security Agreement dated February 21, 1967 (Exhibit G); and

(d) Consignment Agreement dated February 21, 1967 (Exhibit H),

and refer to said agreements for their true terms and conditions; and, except to the extent admitted, deny each and every allegation contained in paragraphs 5, 10 and 11 of the amended complaint.

6. Admit that L. I. Reo from time to time executed and delivered chattel mortgages and trust receipts in the forms annexed as Exhibits C and D to the original complaint; and, except to the extent admitted, deny each and every allegation contained in paragraphs 6 and 7 of the amended complaint.

7. Admit that L. I. Reo made the promissory notes annexed as Exhibits F and I to the original complaint, and refers to the said notes for their true terms and conditions; and, except to the extent admitted, deny each and every

8. Admit that L. I. Reo made a promissory note to plaintiff on or about August 28, 1965; allege that the method of paying the note was provided in the Agreement dated November 23, 1966; and, except to the extent admitted, deny each and every allegation contained in paragraph 20 of the amended complaint.

9. Defendant Thomas A. Vincel admits that he signed the promissory notes referred to in paragraph 7 of this amended answer and otherwise denies each and every allegation contained in paragraphs 23 and 24 of the amended complaint.

FIRST DEFENSE

10. L. I. Reo is a corporation organized under the laws of New York and for many years was engaged in the business of selling trucks and truck parts and servicing customers' trucks in the Counties of Queens and Suffolk in the State of New York.

11. Defendant Thomas A. Vincel was and is president, a director and a stockholder of L. I. Reo.

12. Upon information and belief:

(a) Plaintiff was and is a corporation organized under the laws of Ohio and was and is engaged in the manufacture of trucks which it sold and sells throughout the United States, including the State of New York, and in foreign countries.

(b) Plaintiff's principal plant is located in Cleveland, Ohio.

(c) In or about June 1957, plaintiff acquired substantially all of the assets of Reo Motors, Inc., a manufacturer of trucks whose principal plant was located at Lansing, Michigan.

(d) In or about April 1958, plaintiff acquired the inventories and other assets of Diamond T Motor Car Co., a manufacturer of trucks.

(e) Thereafter, plaintiff operated three principal truck divisions, as follows: White Truck Division at Cleveland, Ohio; Reo Motor Truck Division at Lansing, Michigan; and Diamond Motor Truck Division at Lansing, Michigan, all engaged in the manufacture of trucks for sale in the United States, including the State of New York, and foreign countries.

(f) During the Spring of 1967, plaintiff combined the Reo Motor Truck and Diamond Motor Truck Divisions into the Diamond Reo Division which it continues to operate at Lansing, Michigan.

(g) The additional defendant, Glenn F. Kommer, was and is an official of plaintiff and is presently treasurer of its Diamond Reo Division.

(h) Plaintiff is licensed to do business in the State of New York, maintains an office for the transaction of business in the State of New York, and through its officers, employees, and agents, including Glenn F. Kommer, transacts business in the State of New York and derives substantial revenue from the sale of goods in the State of New York.

13. L. I. Reo, and its predecessor partnership (of which Thomas A. Vincel was a member), were dealers in Reo trucks and parts under successive franchise agreements

entered into with plaintiff. When plaintiff's Reo Motor Truck and Diamond Motor Truck divisions were combined, L. I. Reo became a dealer in Diamond Reo trucks and parts und franchise from plaintiff.

14. On or about November 23, 1966, plaintiff required L. I. Reo to enter into a financing agreement, copy of which is annexed as Exhibit E to plaintiff's original complaint.

15. The Agreement of November 23, 1966 required the stockholders of L. I. Reo and of its affiliated corporations, including defendant Thomas A. Vincel, to deposit their shares in a Voting Trust of which the Trustee would be a person designated by plaintiff. Plaintiff designated Glenn F. Kommer, the additional defendant, to be the Trustee.

16. Plaintiff required the stockholders of L. I. Reo and its affiliated corporations to enter into a Voting Trust Agreement with Glenn F. Kommer, dated December 29, 1966, and said stockholders, including defendant Thomas A. Vincel, deposited their shares of stock in L. I. Reo and in the affiliated corporations with Glenn F. Kommer as Trustee.

17. Plaintiff required the said stockholders to agree that they and members of their families would not, while L. I. Reo was indebted to plaintiff, engage in any business competitive with the business of L. I. Reo or of its affiliated corporations.

18. The Voting Trust Agreement of December 29, 1966 ("the Voting Trust Agreement") provided that it was to be governed by and construed in accordance with the laws of the State of New York. The shares deposited with Glenn F. Kommer as Trustee were kept by him, through the custody and possession of his and plaintiff's agents, in the State of New York.

19. The Voting Trust Agreement of December 29, 1966 contained the following provision for the appointment of a General Manager for L. I. Reo by the Trustee:

> "It is understood and agreed that the Trustee may cause L. I. Reo's Board of Directors to appoint a person acceptable to him to act as L. I. Reo's General Manager, whose salary shall be paid by the Trustee. ..."

20. Thereafter, as a result of meetings in the State of New York, Glenn F. Kommer selected Samuel Antelis ("Antelis"), a resident of New York, to be General Manager of L. I. Reo and requested the directors of L. I. Reo to appoint him as General Manager. The Board of Directors of L. I. Reo thereupon adopted a resolution provided in part:

> "RESOLVED that Mr. Samuel Antelis of 172-20 133rd Avenue, Jamaica, New York, be and he hereby is appointed General Manager of this Corporation, to serve at the pleasure of G. F. Kommer, Voting Trustee. ..."

21. Until on or about the commencement of this action Antelis served as General Manager of L. I. Reo at the pleasure of plaintiff and Glenn F. Kommer and under their direction and supervision.

22. By reason of the foregoing, plaintiff and Glenn F. Kommer dominated and controlled the financial affairs of L. I. Reo.

23. All monies realized from the sale of trucks and truck parts, and all other income realized by L. I. Reo, were turned over by L. I. Reo's officers and employees to the control of Antelis and the application of said monies was in the exclusive control of Antelis.

24. L. I. Reo, its officers and stockholders, relied upon plaintiff and Glenn H. Kommer to conduct the financial affairs of L. I. Reo in good faith and in the best interests of L. I. Reo, all of its creditors and its stockholders.

25. Plaintiff and Glenn H. Kommer did not act in good faith and in the best interests of L. I. Reo, its credito and stockholders, in the conduct of the financial affairs of L. I. Reo but conducted them in a manner designed to enable plaintiff to claim at will that L. I. Reo had breached its agreements with plaintiff.

26. Plaintiff is precluded from claiming that L. I. Reo breached its agreements with plaintiff in the manner alleged in the amended complaint.

FIRST COUNTERCLAIM

27. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 23 of this amended answer as though fully set forth herein.

28. Plaintiff, with the active assistance of Glenn F. Kommer and with the intent and purpose to evade its aforesaid contractual and franchise obligations to L. I. Reo, to destroy the business of L. I. Reo, and to cause injury to

Thomas A. Vincel, determined to, and did, claim that its own acts and those of its agents in the conduct of the financial affairs of L. I. Reo constituted breaches by L. I. Reo of its agreements with plaintiff.

29. Using the alleged breaches as a pretext, plaintiff, with the active assistance and participation of Glenn F. Kommer, declared L. I. Reo to be in default under its agreements with plaintiff, demanded full payment of monies allegedly owing to plaintiff, demanded possession of all trucks and parts owned and possessed by L. I. Reo, and took steps to enforce said unwarranted demands, as a result of which L. I. Reo was forced to close its doors and discontinue its business.

30. Prior thereto L. I. Reo was one of the largest dealers in Diamond Reo trucks and had made sales of approximately $12,000,000 under the franchises from plaintiff. L. I. Reo's sales aggregated $2,710,131 during the fiscal year ending September 30, 1965, $2,961,625 during the fiscal year ended September 30, 1966, and were approaching a record during fiscal 1967. L. I. Reo's operations were profitable and its prospects excellent.

31. In reliance upon its franchises from plaintiff and its contractual arrangements with plaintiff, L. I. Reo and its affiliated corporations purchased vehicles and parts and made substantial capital investments for the purpose of increasing the sales volume and potential of L. I. Reo and L. I. Reo's officers devoted their talents and an extraordinary amount of time and effort to the building of a valuable distributorship of plaintiff's trucks.

32. Plaintiff and Glenn F. Kommer have caused substantial damage to L. I. Reo, its other creditors and its stockholders, including defendant Thomas A. Vincel. L. I. Reo has been unable to fill orders on hand for new trucks and to continue negotiations looking toward the sale of trucks. Its capital investments have been seriously damaged and its good will has been destroyed.

33. The agreements referred to in paragraphs 14 and 16 of this amended answer were prepared in the State of New York as a result of meetings between the parties, including Glenn F. Kommer. Following the execution of the agreements, Glenn F. Kommer and his agents engaged in numerous activities in the State of New York relative to the agreements and to the conduct of the financial affairs of L. I. Reo.

34. By reason of the foregoing, defendants have been damaged in the sum of $2,000,000.

SECOND COUNTERCLAIM

35. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 23 of this amended answer as though fully set forth herein.

36. Plaintiff and Glenn F. Kommer assumed fiduciary obligations to L. I. Reo, its other creditors, its stockholders and its affiliated corporations to act in the best interests of L. I. Reo in the control and management of its financial affairs.

37. After obtaining control and management of the financial affairs of L. I. Reo, plaintiff and Glenn F.Kommer breached their said fiduciary obligations, acted in their own selfish interests and in bad faith, acted with indifference to the interests of L. I. Reo, subordinated the interests of L. I. Reo to their own interests, and engaged in acts detrimental and prejudicial to the defendants and others interested in L. I. Reo.

38. Defendants repeat and reallege each and every allegation contained in paragraphs 28 through 34 of this amended answer as though fully set forth herein.

THIRD COUNTERCLAIM AND SECOND DEFENSE

39. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 19 of this amended answer as though fully set forth herein.

40. Defendants and the stockholders of L. I. Reo entered into said agreements as a result of intimidation, duress and coercion on the part of plaintiff and Glenn F. Kommer in that plaintiff and Glenn F. Kommer threatened to cancel the franchise of L. I. Reo, put L. I. Reo out of business and cause criminal proceedings to be brought against Thomas A. Vincel unless the agreements were executed; and said agreements would not have been executed by L. I. Reo, Thomas A. Vincel and other stockholders had it not been for such intimidation, duress and coercion.

41. The said agreements were extremely onerous in their terms and were designed by plaintiff and Glenn F. Kommer to enable them to injure L. I. Reo and Thomas A. Vincel and to drive them out of business.

42. Defendants repeat and reallege the allegations of paragraphs 20 through 24 and paragraphs 28 through 34 of this amended answer as though fully set forth herein.

FOURTH COUNTERCLAIM

43. Defendants repeat and reallege the allegations of paragraphs 10 through 19, paragraphs 40 and 41 paragraphs 20 through 24, and paragraphs 28 and 29 of this amended answer as though fully set forth herein.

44. Thereupon plaintiff, with the active assistance of participation of Glenn F. Kommer, wrongfully cancelled the franchise held by L. I. Reo.

45. Plaintiff and Glenn F. Kommer cancelled the said franchise without cause.

46. Plaintiff and Glenn F. Kommer acted in bad faith in the performance of the franchise held by L. I. Reo and of the said agreements between plaintiff and L. I. Reo, continued to intimidate and coerce defendants for the purpose of bringing about a cancellation of the franchise, and cancelled the said franchise in bad faith.

47. Defendants repeat and reallege the allegations contained in paragraphs 30 through 34 of this amended answer as though fully set forth herein.

FIFTH COUNTERCLAIM

48. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 13 of this amended answer as though fully set forth herein.

49. Upon information and belief, the plaintiff, Glenn F. Kommer, officers of plaintiff, plaintiff's White Motor Truck Division, its Reo Motor Truck Division, its Diamond Motor Truck Division and officials of said Divisions, entered into a conspiracy in or about 1966 to combine plaintiff's major truck divisions and to drive out of business the largest dealers, including L. I. Reo, selling only Diamond or Reo trucks so as to circumvent plaintiff's contractual obligations and franchise commitments to them, thereby benefiting plaintiff and distributors of White Motor trucks.

50. Upon information and belief, pursuant to said conspiracy -

(a) The plaintiff's Reo Motor Truck Division and its Diamond Motor Truck Division have been combined and the separate manufacture of Diamond trucks and Reo trucks has been discontinued;

(b) Plaintiff and its co-conspirators have commenced to offer the sale of trucks and parts manufactured at the Diamond Reo Division at Lansing, Michigan under the White label to dealers under franchise from plaintiff's White Truck Division;

(c) By means of intimidation, duress and coercion, as alleged in paragraph 40 of this amended answer, and for the purposes of the conspiracy and the reasons alleged in paragraph 41 of this amended answer, plaintiff and Glenn F. Kommer required L. I. Reo and its stockholders and stockholders of its affiliated corporations to enter into the agreements and commitments alleged in paragraphs 14 through 19 of this amended answer;

(d) Defendants repeat and reallege each and every allegation contained in paragraphs 20, 21 and 23 of this amended answer as though fully set forth herein;

(e) Plaintiff and Glenn F. Kommer acquired complete control of the financial affairs of L. I. Reo and exercised their control in the manner alleged in paragraphs 25 and 37 of this amended answer;

(f) Defendants repeat and reallege each and every allegation contained in paragraphs 28 and 29 of this amended answer as though fully set forth herein.

(g) Plaintiff and Glenn H. Kommer, and their agents, wrongfully and maliciously spread untrue statements in the trade and among customers and creditors of L. I. Reo that defendant Thomas A. Vincel had committed criminal acts, that it was desirable to seize trucks owned or possessed by affiliates of L. I. Reo, that it was desirable to institute legal proceedings against defendants, and that defendants had secreted monies belonging to L. I. Reo.

50. Defendants repeat and reallege each and every allegation contained in paragraphs 30 through 34 of this amended answer as though fully set forth herein.

SIXTH COUNTERCLAIM ON BEHALF OF DEFENDANT L. I. REO

51. Defendants repeat and reallege each and every allegation contained in paragraphs 10 through 13 of this amended answer as though fully set forth herein.

52. On or about August 25, 1967, plaintiff and Glenn F. Kommer delivered to a Sheriff of the State of New York a requisition (dated August 25, 1967) to seize vehicles owned and possessed by L. I. Reo valued at $351,449.27, together with an affidavit of Glenn F. Kommer (sworn to

in New York August 25, 1967) claiming that plaintiff was entitled to possession of the vehicles, and an undertaking in the sum of $702,898.54.

53. Thereafter, in the presence of Glenn F. Kommer and of agents of plaintiff, the Sheriff served upon L. I. Reo president, Thomas A. Vincel, in the State of New York, the said requisition, affidavit and undertaking, together with a copy of the summons and original complaint in this action.

54. L. I. Reo thereupon yielded to the mandate of the Court and, in reliance upon the undertaking, permitted the Sheriff to remove 42 vehicles from its premises (including 3 vehicles then located in body shops).

55. Upon information and belief, plaintiff and Glenn F. Kommer wrongfully and maliciously, in disregard of the requisition and undertaking delivered to the Sheriff and served upon L. I. Reo, took possession of and removed at least 36 vehicles directly for plaintiff's own account and thereby circumvented the mandate of the Court without the knowledge or consent of L. I. Reo.

56. L. I. Reo would not have permitted plaintiff and Glenn F. Kommer to remove the said vehicles if it had been informed that the requisition and the undertaking were not applicable to them.

57. As a result of the removal of the vehicles, L. I. Reo was required to discontinue the sale of trucks.

58. Defendants repeat and reallege each and every allegation contained in paragraphs 30 through 32 of this amended answer as though fully set forth herein.

59. By reason of the foregoing, defendant L. I. R is entitled to return of the 36 vehicles wrongfully taken by plaintiff and to damages in the sum of $1,000,000.

THIRD DEFENSE ON BEHALF OF DEFENDANT VINCEL

60. The original summons and complaint in this action named L. I. Reo as the sole defendant. The summons and complaint were served upon L. I. Reo and L. I. Reo appea in the action.

61. Thereafter, without applying to or obtaining authorization of this Court to add a new defendant and to issue a supplemental summons, plaintiff caused the issuance of a new summons naming Thomas A. Vincel as a defendant in this action.

62. At the request of plaintiff's attorneys, in lieu of personal service, defendants' attorneys accepted service on behalf of Thomas A. Vincel of the new summons and amended co plaint.

63. By reason of the foregoing, the Court has not acquired jurisdiction over the person of defendant Thomas A. Vincel.

WHEREFORE, defendants demand judgment:

1. Dismissing the complaint;

2. Ordering return of the seized vehicles;

3. Awarding to defendants damages in the sum of $2,000,000 against plaintiff and the additional defendant on the First, Second, Third, Fourth and Fifth Counterclaims;

4. Awarding to defendant L. I. Reo damages in the sum of $1,000,000 against plaintiff and the additional defendant, and ordering return of the 36 vehicles wrongfully taken by plaintiff, on the Sixth Counterclaim,

together with the costs and disbursements of the action.

REMBAR & ZOLOTAR
Attorneys for Defendants
Office and P. O. Address
521 Fifth Avenue
New York, N. Y.
OXford 7-1787

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

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THOMAS A. VINCEL, being duly sworn, deposes and says:

He is president of LONG ISLAND DIAMOND REO TRUCK CO., INC., one of the defendants in this action, a domestic corporation, and he is also a defendant in this action; that he has read the foregoing Amended Answer and Counterclaims and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

S/ Thomas A. Vincel
THOMAS A. VINCEL.

Sworn to before me this
31st day of October 1967

Notary Public

SHIRLEY SCHWARTZ
NOTARY PUBLIC, State of New York
No. 03-3557800
Qualified in Bronx County
Commission Expires March 30, 1969

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

LONG ISLAND DIAMOND REO TRUCK CORP., formerly known as LONG ISLAND REO TRUCK CO., INC.,

Bankrupt.

116A

ORDER

WHEREAS, a compromise of the claims of White Motor Corporation against the bankrupt and the bankrupt's claims against White Motor Corporation and Glenn F. Kommer, has, after hearing held on August 15, 1968, been approved by the Referee and on Order approving compromise entered August 27, 1968, it is hereby

ORDERED, that pursuant to 11 U.S.C.A. 29 (b) and (c), the Trustee, Mitchell N. Kay, be and he hereby is directed to enter his appearance in an action entitled "White Motor Corporation against Long Island Diamond Reo Truck Co. Inc., et ano.", Supreme Court of the State of New York, County of New York, Index No. 14135/1967 and make or join in whatever application is necessary in order that he may be substituted as defendant and counterclaimant in said action for the purpose of causing said action and counterclaim to be dismissed with prejudice, in accordance with the Order Approving Compromise entered this date.

Dated: Jamaica, New York
August 28, 1968

S [redacted] B. [redacted]
Referee in Bankruptcy

CONSENTED TO:

Louis P. Rosenberg

Louis P. Rosenberg, Atty. for Trustee

REAVIS & McGRATH
Attorneys for White Motor Corporation

by [redacted]

EXH. E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

117A

WHITE MOTOR CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND REO TRUCK CO., INC., and THOMAS A. VINCEL,

Defendants.

- and -

GLENN F. KOMMER,

Defendant to Counterclaim.

STIPULATION

Index No. 14135/67

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys for plaintiff WHITE MOTOR CORPORATION and defendant to counterclaim, GLENN F. KOMMER, and the attorney for MITCHELL N. KAY, Trustee in Bankruptcy of Long Island Diamond Reo Truck Corp., a/k/a Long Island Diamond Reo Truck Co., Inc., that whereas said parties are not infants or incompetents for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action. The action of White Motor Corporation against Long Island Diamond Reo Truck Co., Inc. and the counterclaims of Long Island Diamond Reo Truck Co., Inc. against White Motor Corporation and Glenn F. Kommer be, and the same hereby are discontinued with prejudice, without costs to either party as against the other. This stipulation shall not affect, and there shall be preserved, the rights of plaintiff against defendant Thomas A. Vincel and said defendant's rights against plaintiff. This stipulation may be filed without further

EXH. F

notice, with the Clerk of this Court.

Dated: New York, New York
September 13, 1968

REAVIS & McGRATH, Attorneys for
WHITE MOTOR CORPORATION and
GLENN F. KOMMER

LOUIS P. ROSENBERG, Attorney
for MITCHELL N. KAY, TRUSTEE
IN BANKRUPTCY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

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THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO and LIRCO CREDIT CORP.,

Plaintiffs,

- against -

WHITE MOTOR CORPORATION and GLENN F. KOMMER,

Defendants.

- x

69 Civil 753

PLAINTIFFS' REPLY TO COUNTERCLAIMS

Plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN, by their attorneys, Hellerstein, Rosier & Rembar, for their reply to the counterclaims of the defendant WHITE MOTOR CORPORATION ("WHITE") and for their defenses to said counterclaims respectfully allege:

THOMAS A. VINCEL REPLYING TO THE FIRST COUNTERCLAIM OF DEFENDANT WHITE

1. Admits that Vincel was the President and a principal stockholder of L. I. REO, and is a resident of the State of New York and of this district; and except as expressly admitted herein denies the allegations of paragraph 42.

2. Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs 45 and 46.

3. Admits that on or about November 23, 1966, WHITE, L. I. REO, and the principal stockholders of L. I. REO entered into an agreement, a copy of which is annexed to the complaint as Exhibit "A", and that L. I. REO executed a promissory note to WHITE dated November 23, 1966; and except as expressly admitted

herein denies the allegations of paragraph 47 (a).

4. Admits that on or about February 20, 1967, L. I. REO executed a promissory note to WHITE in the amount of $42,739.56; and except as expressly admitted herein denies the allegations of paragraph 47 (b).

5. Denies the allegations of paragraphs 49 and 50.

THOMAS A. VINCEL REPLYING
TO THE SECOND COUNTERCLAIM
OF DEFENDANT WHITE

6. Replying to paragraph 51, repeats and realleges each and every allegation of paragraphs 1 through 4 above as if fully set forth herein.

7. Denies the allegations of paragraph 52, except admits that WHITE entered into two agreements with L. I. REO dated February 21, 1967.

8. Denies the allegations of paragraphs 53, 54, 55, 56, 57 and 58.

THOMAS A. VINCEL, NUNO TARDO
AND WILLIAM BREEN REPLYING TO
THE THIRD COUNTERCLAIM OF
DEFENDANT WHITE

9. Replying to paragraph 59, repeat and reallege each and every allegation of paragraphs 1 through 3 above as if fully set forth herein.

10. Deny the allegations of paragraphs 60, 61, 62, 63, 64, 65 and 66.

THOMAS A. VINCEL REPLYING
TO THE FOURTH COUNTERCLAIM
OF DEFENDANT WHITE

11. Replying to paragraph 67, repeats and realleges each and every allegation of paragraphs 1 and 2 above as if fully

set forth herein.

12. Denies the allegations of paragraphs 69, 70, 71 and 72.

THOMAS A. VINCEL, NUNO TARDO AND WILLIAM BREEN REPLYING TO THE FIFTH COUNTERCLAIM OF DEFENDANT WHITE

13. Replying to paragraph 73, repeat and reallege each and every allegation of paragraphs 1 through 4 and paragraph 10 above as if fully set forth herein.

14. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 75.

15. Deny the allegations of paragraphs 74, 76, 77 and 78.

FIRST DEFENSE TO ALL COUNTERCLAIMS OF DEFENDANT WHITE

16. Each of the counterclaims fails to set forth a claim upon which relief can be granted.

SECOND DEFENSE TO ALL COUNTERCLAIMS OF DEFENDANT WHITE

17. On or about August 25, 1967, WHITE commenced an action in the Supreme Court, New York County (Index #14135/1967) against L. I. REO. Said action, alleging conversion of motor vehicles by L. I. REO, sought to replevy vehicles valued at $351,449.27, or damages for said sum in case possession of said vehicles could not be given to WHITE. The plaintiff also sought an additional $227,675.36 on notes and other instruments executed by L. I. REO. A copy of said complaint is annexed hereto as Exhibit "A" and made a part hereof.

18. On or about August 28, 1967, WHITE applied for, and on or about September 1, 1967, WHITE obtained, a court order in said action attaching the property of L. I. REO. Copies of the affidavit of defendant GLENN F. KOMMER applying for the order of attachment, and of the order, are annexed hereto as Exhibits "B" and "C", respectively, and are made a part hereof.

19. On or about September 1, 1967, WHITE filed an amended complaint in said action bringing in VINCEL as a defendant on his guarantee of notes of L. I. REO, and realleging the conversion of motor vehicles by L. I. REO (not by VINCEL) and the execution of the notes by L. I. REO. A copy of the amended complaint is annexed hereto as Exhibit "D" and is made a part hereof.

20. On or about October 31, 1967, L. I. REO and VINCEL filed their amended answer to the amended complaint in said action, asserting counterclaims against WHITE and KOMMER for injuries to L. I. REO and to VINCEL. A copy of said amended answer is attached to the defendants' answer herein as Exhibit "D", and is made a part hereof.

21. On or about August 27, 1968, Honorable Sherman D. Warner, Referee in Bankruptcy for the Eastern District of New York, signed an order approving the discontinuance with prejudice of said action. A copy of said order is attached to the defendants' answer herein as Exhibit "B", and is made a part hereof.

22. Pursuant to the aforesaid order, WHITE by agreement with the Trustee in Bankruptcy for L. I. REO dated September 23, 1968 released and discharged L. I. REO from all claims, rights, demands or causes of action against L. I. REO that WHITE then had or may have, including specifically the claims asserted by WHITE in the Supreme Court action. A copy of said agreement is attached to the defendants' answer herein as Exhibit "C", and is made a part hereof.

Bankruptcy for L. I. REO stipulated to discontinue the action of WHITE against L. I. REO and the counterclaim of L. I. REO against WHITE. Said discontinuance was with prejudice. A copy of said discontinuance is attached to the defendants' answer herein as Exhibit "F", and is made a part hereof. 123A

24. All the counterclaims asserted by defendant WHITE herein are based upon the same instruments and conversion of the same motor vehicles that were the basis for the claims of WHITE in the Supreme Court action.

25. As a result of the aforesaid order of Referee Warner, the aforesaid release and discharge of September 23, 1968, and the aforesaid stipulation of discontinuance, defendant WHITE is estopped and barred from maintaining the counterclaims set forth herein.

THIRD DEFENSE TO ALL
COUNTERCLAIMS OF
DEFENDANT WHITE

26. Plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN repeat and reallege each and every allegation of paragraphs 17, 18, 19, 20, 21 and 22 of this reply as if fully set forth herein.

27. In the L. I. REO bankruptcy proceeding, WHITE filed claims as a secured and general creditor in the total amount of $323,610.14.

28. All the counterclaims asserted by the defendant WHITE herein are based upon the same instruments and conversion of the same motor vehicles that were the basis for the claims of WHITE in the bankruptcy proceeding.

29. As a result of the aforesaid release and discharge of September 23, 1968 and Court orders in the bankruptcy proceeding, defendant WHITE is estopped and barred from maintaining the counterclaims set forth herein.

FOURTH DEFENSE TO ALL COUNTERCLAIMS OF DEFENDANT WHITE

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30. In August and September 1967 defendant WHITE seized all motor vehicles, parts, and bank accounts of L. I. REO.

31. Upon information and belief the value of said motor vehicles, parts, and bank accounts exceeds the sums claimed as damages in the counterclaims set forth herein and has been retained by WHITE, and constitutes full payment of all sums so claimed.

FIFTH DEFENSE TO ALL COUNTERCLAIMS OF DEFENDANT WHITE

32. Plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN repeat and reallege each and every allegation of paragraphs 17, 18, 19, 20 and 21 of this reply as if fully set forth herein.

33. The order of Referee Warner referred to in paragraph 21 (Exhibit "B" to the defendants' answer herein) provided in part:

(1) That the Trustee in Bankruptcy of L. I. REO would receive from WHITE a certified check in the amount of $100,000.

(2) That WHITE would withdraw its claims in the bankruptcy proceeding in the total amount of $323,610.14 plus

interest by filing with the court a notice of withdrawal.

(3) That the Trustee in Bankruptcy of L. I. REO would:

(a) Discontinue with prejudice his counterclaim against WHITE in the amount of $3,000,000.

(b) Release WHITE and KOMMER from all matters and claims which the trustee or L. I. REO have; and

(c) Deliver to WHITE a bill of sale of personal property, an assignment of interest in and to a $26,000 reserve account, and other documents permitting WHITE to sell or license motor vehicles replevied by WHITE.

34. Upon information and belief the Trustee in Bankruptcy of L. I. REO has performed all the acts and delivered to WHITE all the consideration provided for in said order.

35. As a result of the aforesaid, defendant WHITE has received and retained values that exceed the sums claimed as damages in the counterclaims set forth herein, and that constitute full payment of all sums so claimed.

SIXTH DEFENSE TO THE FIRST COUNTERCLAIM OF DEFENDANT WHITE AGAINST PLAINTIFF THOMAS A. VINCEL

36. Plaintiff THOMAS A. VINCEL repeats and realleges each and every allegation of paragraphs 17, 18, 19, 20, 21, 22 and 23 of this reply as if fully set forth herein.

37. On or about November 23, 1966, L. I. REO executed a promissory note to WHITE in the sum of $195,837.57. Payment of said note was guaranteed by THOMAS A. VINCEL.

38. On or about February 10, 1967, L. I. REO executed a promissory note to WHITE in the sum of $42,739.56. Payment of said note was guaranteed by THOMAS A. VINCEL.

39. The aforesaid Supreme Court action contained causes of action brought by WHITE against L. I. REO for collection of the notes referred to in the first counterclaim of the defendant WHITE.

40. As a result of the aforesaid order of Referee Warner, the aforesaid release and discharge of September 23, 1968, and the aforesaid stipulation of discontinuance, WHITE released L. I. REO from liability upon the aforesaid promissory notes.

41. The release of L. I. REO, the obligor of said notes, released plaintiff THOMAS A. VINCEL from his guaranty of payment.

42. By reason of the aforesaid the defendant WHITE is barred and estopped from maintaining this counterclaim against plaintiff THOMAS A. VINCEL.

SEVENTH DEFENSE TO THE FOURTH COUNTERCLAIM OF DEFENDANT WHITE AGAINST PLAINTIFF THOMAS A. VINCEL

43. On or about November 23, 1966 defendant WHITE, L. I. REO, plaintiff THOMAS A. VINCEL, and other shareholders of L. I. REO entered into a written agreement, a copy of which is annexed to the complaint as Exhibit "A" and is made a part hereof.

44. In and by paragraph 1 of said agreement, WHITE released and forever discharged L. I. REO, THOMAS A. VINCEL, and other shareholders of L. I. REO from all manner of actions, causes of action, claims and demands whatsoever, by reason of any matter, cause or thing whatsoever to the date of said agree-

ment, other than duties and obligations contained in and collateral to the agreement itself and a note dated October 28, 1965, on which a balance of $18,180 was due on November 23, 1966.

45. As a result of the aforesaid release WHITE is barred and estopped from maintaining the fourth counterclaim, which is based upon alleged acts all committed prior to November 23, 1966.

WHEREFORE, plaintiffs demand judgment against the defendants as requested in the complaint and further demand that defendant WHITE's counterclaims be dismissed.

Dated: New York, New York
September 10, 1969

Hellerstein, Rosier & Rembar

by: /s/ Myron S. Isaacs
Attorneys for Plaintiffs
19 West 44th Street
New York, New York 10036
Telephone: WH 3-8730

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

— 128A

Index No. 14135/67

WHITE MOTOR CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC.,

Defendant.

Plaintiff by its attorneys, REAVIS & McGRATH for its complaint alleges:

1. At all times hereinafter mentioned plaintiff was a corporation organized and existing under the laws of the State of Ohio.

2. On information and belief, at all times hereinafter mentioned defendant was a corporation organized and existing under the laws of the State of New York.

3. Plaintiff is the assignee of certain trust receipts, chattel mortgages and an agreement of financing entered into between defendant and UNIVERSAL C.I.T. CREDIT CORPORATION ("C.I.T." hereinafter). On or about November 3, 1966 C.I.T. duly sold and assigned to plaintiff all of its right, title and interest in and to said trust receipts, chattel mortgages and the agreement of financing.

EXHIBIT "A"

4. On or about August 28, 1964 defendant made, executed and delivered to C.I.T. a certain agreement of financing, a copy of which is annexed hereto and marked as Exhibit A. The terms thereof are fully set forth in said Exhibit A and the Court is respectfully required to make reference thereto.

5. On or about the dates set forth in the schedule annexed hereto as Exhibit B, defendant made, executed and delivered to C.I.T. certain chattel mortgages in connection with certain motor vehicles defendant purchased from plaintiff and C.I.T. financed for defendant. The Court is respectfully requested to refer to the schedule annexed hereto as Exhibit B for the details and particulars of each of said chattel mortgages and the motor vehicles mortgaged. A copy of the form of chattel mortgage used in each transaction is annexed hereto as Exhibit C. The Court is respectfully requested to refer thereto for its terms.

6. In connection with the chattel mortgages and the agreement of financing referred to above, defendant made, executed and delivered to C.I.T. certain trust receipts. The Court is respectfully requested to refer to the copy of the form sample of trust receipt which is annexed hereto as Exhibit D.

7. On or about November 23, 1967, plaintiff and defendant entered into an agreement, (a copy of which is annexed hereto as Exhibit D) and defendant executed a promissory note in plaintiff's favor, (a copy of which is annexed

hereto as Exhibit F). The Court is respectfully requested to refer to Exhibits E and F for the terms thereof.

8. Pursuant to the agreement annexed hereto as Exhibit E, plaintiff entered into two agreements dated February 21, 1967 which are referred to as "Security Agreement" (annexed hereto as Exhibit G) and "Consignment Agreement" (annexed hereto as Exhibit H). The Court is respectfully requested to refer to Exhibits G and H for the terms thereof.

9. (a) Pursuant to the aforesaid "Consignment Agreement" and the agreement of November 23, 1966 and the promissory note of November 23, 1966, the following motor vehicles are the property of and belong to the plaintiff, by reason of the facts hereinbefore and hereinafter alleged:

~~MODEL YEAR~~	MAKE	SERIAL #	MODEL #
	Diamond-Reo	569893	DF-502D
	"	569831	DF-502D
	"	570572	DF-502
	Trend	101065	CF-6842
	Diamond-Reo	571594	DF-402
	"	571819	C-9042
	"	571797	C-10164D
		572067	C-10142
		571327	DL-730D
		572131	C-10142
		572149	C-10142
		572150	C-10142
		571810	C-9042
		572179	C-10142D
		571883	C-9042
		571914	GH830DB-OH
		572200	DH-732-DOH
		572298	C-10142
		572299	C-10142
		572272	C-10142

(b) Pursuant to the aforesaid "Security Agreement" and the agreement of November 23, 1966 and the promissory note of November 23, 1966, plaintiff is entitled to immediate possession of the following motor vehicles, by reason of the facts hereinbefore and hereinafter alleged; and defendant has failed and refused, although duly demanded, to give plaintiff possession of same:

3(a)

MODEL YEAR	MAKE	SERIAL #	MODEL #	VALUE
	Reo	S35385	501L	3349.00
	"	S38492	C43L	6075.00
	"	S34517	C50L	4500.00
	"	S44950	DF50L	8000.00
	IHC	4064677	1955	2000.00
	Reo	S23376	F50 [illegible]	2500.00
	"	S27249	C50L	3500.00
	"	S34791	C43L	4500.00
	Reo	S66394	E50L0-66	11,234.25
	"	S66030	E40L-66	6,434.18
	"	S65504	7035-66	14,100.08
	"	S66947	E500-66	11,079.60
	"	S67006	E50L-66	7936.15
	"	S67388	E830-67	10,000.00
	"	[illegible]	[illegible]67	
	"	100038	HF300-67	4107.40
	"	S34848	C43L	3000.00
	"	S37203	C43L	3000.00
	White	448347	30L8PLT	3000.00
	GMC	T3150	375F	3000.00
	Reo	S21749	503L	3000.00
	Mack	—	—	3000.00
	Reo	S43127	E503	3000.00
	Reo	S45072	E43L	3000.00
	IHC	SB567433F	1700	3000.00
	Reo	S37297	C50L	3000.00
	IHC	FD1881-G	R192A	3000.00
	Mack	2124	B63SX	3000.00
	GMC	[illegible]	374F	3000.00
	Chev	—	—	3000.00
	GMC	S3434G	555V	3000.00
	Brockway	—	—	3000.00
	Autocar	—	—	3000.00
	Reo	P5800	—	3000.00
	Ford	—	—	3000.00
		3(1) (4)		$351,449.27

10. On or about February 20, 1967, defendant executed in plaintiff's favor a promissory note in the amount of $42,739.56. A copy of said note is annexed hereto as Exhibit I. The Court is respectfully requested to refer to Exhibit I for the terms thereof.

11. (a) Since on or about August 1, 1967, defendant has defaulted in performing the terms of and has breached all of said agreements, trust receipts and chattel mortgages by converting the following motor vehicles owned by plaintiff to its own use and by, on information and belief, fraudulently concealing the proceeds of the sale of the following motor vehicles and failing to transmit the proceeds to plaintiff:

~~MODEL YEAR~~	MAKE	SERIAL #	MODEL #	AMOUNT DUE PLAINTIFF
	Diamond Reo	571819	C 9042	8256.66
	"	571797	C 101644D	14,122.16
	"	572067	C 10142	7145.39
	"	572179	C 10142D	11,760.61
	"	571914	GH 830DD-67	17,399.76
	Reo	567388	E 830-67	10,000.00

(b) Since on or about August 1, 1967, defendant has, on information and belief, converted the motor vehicles listed in paragraph 9(a) above, to its own use and has failed and refused, although demanded, to surrender possession thereof to plaintiff, although plaintiff is the owner and entitled thereto.

12. By reason of the aforesaid defaults and breaches, under the terms of all of the aforesaid agreements, promissory notes, the trust receipts, chattel mortgages and agreement of financing, a total of $ 227,675.36 is due and owing and plaintiff is entitled to immediate possession of the motor vehicles described in paragraph 9.

13. By reason of the aforesaid defaults and breaches, defendant is duly indebted to plaintiff in the amount of $ 227,675.36 . Demand has been made upon defendant to pay said amount and defendant has failed and refused.

14. The value of the vehicles sought to be replevied in this action is $ 351,449.27. By reason of the aforesaid breaches, plaintiff is entitled to immediate possession of all of the motor vehicles. Demand has been made upon defendant to deliver possession of the said motor vehicles to plaintiff. Defendant has refused to deliver said motor vehicles to plaintiff. Thus, defendant has wrongfully detained the same to plaintiff's damage in the sum of

WHEREFORE, plaintiff demands judgment against the defendant for the possession of the said motor vehicles and in case possession thereof cannot be given to the plaintiff the sum of $ 351,449.27 with interest thereon from the 1st day of August, 1967 and for the sum of $ 227,675.36 on account of the breaches of the instruments described above, [redacted], together with the costs of this action, plus interest as provided by law and for such other and further relief as to the Court may seem just and proper.

REAVIS & McGRATH
Attorneys for Plaintiff
1 Chase Manhattan Plaza
New York, N.Y. 10005
269-7600

I am the ..... in the within action. I have read the foregoing and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe it to be true.

Sworn to before me this ..... day of ..... , 19 .....

.....

STATE OF NEW YORK
COUNTY OF New York } ss.:

Glenn F. Kommer , being duly sworn, says:

I am the Treasurer of the Diamond-Reo Division of White Motor Corporation ~~corporation~~ the Plaintiff in the within action. I have read the foregoing complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

I further say that the reason this verification is made by me and not by White Motor Corporation is because the said corporation is an Ohio corporation and I am an officer thereof, to-wit, its Treasurer of its Diamond-Reo Division and have been duly empowered by its Executive Vice-President to execute same on behalf of the plaintiff.

Sworn to before me this 27 day of August , 1957.

Glenn F. Kommer

STEPHEN R. STEINBERG
Notary Public, State of New York
No. 31-9172310
Certificate filed in New York County
Commission Expires March 30, 1958

AFFIDAVIT OR AFFIRMATION OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF } ss.:

, being duly sworn, deposes and says: , admitted to practice in the Courts of the State of New York and with Reavis & McGrath attorneys of record in this action, affirms the following to be true under the penalties of perjury:

I am not a party to the action. On the day of , 19 , at No. in the Borough of City of New York, I served the foregoing upon the in this action, by delivering to and leaving personally with said a true copy thereof.

I knew the person served as aforesaid to be the person mentioned and described in said as the therein.

(Dated)
Sworn to before me this
day of , 19 .

AFFIDAVIT OR AFFIRMATION OF SERVICE BY MAIL

STATE OF NEW YORK
COUNTY OF } ss.:

, being duly sworn, deposes and says: , an attorney admitted to practice in the Courts of the State of New York and associated with Reavis & McGrath, attorneys of record in this action, affirms the following to be true under the penalties of perjury:

I am not a party to the action. On the day of , 19 I served the within upon the attorney for the above named by depositing a copy thereof enclosed in a post-paid properly addressed wrapper in a Post Office Depository within the State of New York, directed to said attorney at

(Dated)
Sworn to before me this
day of , 19 .

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

136A

WHITE MOTOR CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC.,

Defendant.

Index No. 14135/1967

AFFIDAVIT APPLYING FOR ORDER OF ATTACHMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

GLENN F. KOMMER, being duly sworn, says:

1. I am the Treasurer of the DIAMOND-REO DIVISION OF WHITE MOTOR CORPORATION, the plaintiff, and I have knowledge of the facts hereinafter set forth and make this affidavit in support of a motion for an order of attachment, pursuant to §6201 and Rule 6211 CPLR, against the property of LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC. I am authorized by the plaintiff to make this affidavit and verify this complaint pursuant to the documents I annex hereto.

2. A cause of action, other than a matrimonial action, exists in favor of the plaintiff and against the defendant for the recovery of a sum of money arising out of the following facts: On information and belief the defendant has converted to its own use eight (8) DIAMOND-REO trucks, having a value of $68,684.58 , which were consigned by plaintiff and for which the defendant was obligated to pay upon receipt of the purchase price from its retail customer. Instead, the defendant has fraudulently concealed the fact

that these trucks were sold and converted the motor vehicles and their proceeds and fraudulently secreted the proceeds from the plaintiff and failed and refused to pay for same. The basis of the value of $68,684.58 is the invoice cost from plaintiff's factory of the eight (8) trucks involved. The sources of my information were conversations I had on August 25th and August 26 with the principal stockholder of the defendant, Thomas Vincal and my own check of the trucks in defendant's inventory on those dates which determined that these trucks had been sold and not paid for.

3. Plaintiff has demanded and I very believe is entitled, in whole or in part, to a money judgment against the defendant, and the amount herein demanded is over and above all counterclaims known to the plaintiff. The verified complaint is annexed hereto and made a part hereof.

4. The plaintiff ~~is about to~~ has commenced this action in part, to recover the sum of $579,124.63, with interest from August 1, 1967, together with costs, Sheriff's fees and expenses.

5. An undertaking in the amount of $ 6,000.00 is submitted herewith, executed by a Surety Company authorized to execute an undertaking within the State.

6. The purpose of this application is to attach personal property of the defendant such as bank accounts, motor vehicles which are not on defendant's premises but which had been transmitted to body shops for body work, and amounts due defendant from finance companies.

7. No previous application has been made for any other order of attachment nor has any other provisional remedy as defined in §6201 CPLR been sought or secured in this action against this same defendant.

WHEREFORE, I respectfully ask that an order of attachment in the form annexed hereto be issued in favor of plaintiff against the defendant LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC., in the sum of $60,000, and that plaintiff have such other, further and different relief the Court may deem just and proper.

Glenn F. Kommer

Sworn to before me this
28th day of August, 1967.

Notary Public.

STEPHEN P. STEINBERG
Notary Public, State of New York
No. 31-9172310
Certificate filed in New York County
Commission Expires March 30, 1968

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WHITE MOTOR CORPORATION

Certificate as to Execution Authority

The undersigned certifies that he is the acting Assistant Secretary of White Motor Corporation, an Ohio corporation, and that, as such, he is authorized to execute this Certificate on behalf of the Corporation, and further certifies that the following has been excerpted from the Code of Regulations of the Corporation, which Code of Regulations was duly adopted April 24, 1965 at a meeting of the shareowners of the capital stock of the Corporation and is in full force and effect on the date of this Certificate:

"ARTICLE VII
EXECUTION AND SIGNATURE OF DOCUMENTS

Unless the Board of Directors in specific instances otherwise provides, deeds, leases, real estate mortgages and other formal instruments under seal shall be signed by the chairman of the Board, or the president or a vice president, and attested by the secretary or an assistant secretary or the treasurer or an assistant treasurer. All other instruments, contracts and documents of every class and description requiring the signature of the Corporation shall be signed by such officer or officers and/or assistant officer or officers and/or agent or agents as the Board of Directors may from time to time authorize or designate or expressly delegate authority to designate, except as otherwise specifically provided in these regulations.",

and further certifies that at a meeting of the Board of Directors of the Corporation, duly held on May 26, 1965, at which meeting a quorum was present and acting at all times, the following resolution was duly adopted:

"FURTHER RESOLVED, that pursuant to Article VII of the Code of Regulations, authority to designate officers, assistant officers or agents of the Corporation to sign instruments, contracts and documents of every class and description requiring the signature of the Corporation, other than deeds, leases, real estate mortgages and other formal instruments under seal, is hereby delegated to J. N. Bauman, President and Chief Executive Officer, or J. P. Dragin, Executive Vice President;".

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Corporation this 24th day of August, 1967.

Assistant Secretary of
White Motor Corporation

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WHITE MOTOR CORPORATION

100 Erieview Plaza · Cleveland, Ohio 44114 · Area Code 216 / 523-5800

J. P. DRAGIN
EXECUTIVE VICE PRESIDENT

August 24, 1967

Mr. G. F. Kommer:

On May 26, 1965 the Board of Directors delegated to me the authority to designate persons to sign contracts and other documents, other than deeds, leases, real estate mortgages and other formal instruments under seal, requiring the signature of the Corporation pursuant to Article VII of the Code of Regulations which provides:

> "Execution and Signature of Documents
> Unless the Board of Directors in specific instances otherwise provides, deeds, leases, real estate mortgages and other formal instruments under seal shall be signed by the chairman of the Board, or the president or a vice president, and attested by the secretary or an assistant secretary or the treasurer or an assistant treasurer. All other instruments, contracts and documents of every class and description requiring the signature of the Corporation shall be signed by such officer or officers and/or assistant officer or officers and/or agent or agents as the Board of Directors may from time to time authorize or designate or expressly delegate authority to designate, except as otherwise specifically provided in these regulations."

Pursuant to this delegation, I hereby designate you as a person to execute court pleadings and all instruments necessary and related to the obtaining of surety bonds in connection with court proceedings of whatever form against Long Island Reo Truck Co., Inc.

Very truly yours,

J. P. Dragin
Executive Vice President

RHC:bs

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At a Special Term Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York, N.Y., on the 1 day of August, 1967. September

P R E S E N T:

HON. JOHN L. FLYNN

Justice.

WHITE MOTOR CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC.,

Defendant.

Index No. 14135/1967

ORDER OF ATTACHMENT

A motion having been made by the plaintiff for an Order of Attachment against the property of the defendant in an action in the Supreme Court, New York County,

NOW, on reading and filing the summons and verified complaint herein, the affidavit of Glenn H. Kommer, duly sworn to August 28, 1967 wherein it appears that a cause of action for a money judgment in favor of the plaintiff and against the defendant, where the plaintiff has demanded and would be entitled to the sum stated in the affidavit $579,124.63 with interest from August 1, 1967 and that the plaintiff is entitled to recover said sum above all counter-claims known to it;

AND it being further shown by said affidavit, and verified complaint that the plaintiff is entitled to an order of attachment against the property of the defendant on the ground that defendant has converted motor vehicles and monies owned by the plaintiff, and the undertaking required by law having been submitted herewith,

EXHIBIT "C"

NOW, on motion of Reavis & McGrath, attorneys for plaintiff, it is

ORDERED, that the plaintiff's undertaking be and the same hereby is fixed in the sum of $6,000, of which amount the sum of $ 3,000.00 thereof is conditioned that the plaintiff will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the defendant recovers judgment or it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and the balance thereof conditioned that the plaintiff will pay to the sheriff all of his allowable fees, and it is further

ORDERED, that the Sheriff of the City of New York, or the Sheriff of any county of the State of New York, levy within his jurisdiction, at any time before final judgment, upon such property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the plaintiff's demand of $ 60,000 , together with probable interest, costs and the Sheriff's fees and expenses, and that he proceed hereon in the manner required by law.

ENTER within ten days.

J. L. F
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- 143A

WHITE MOTOR CORPORATION,

Plaintiff,

-against-

LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC., and THOMAS A. VINCEL,

Defendants.

Index No. 14135/67

AMENDED VERIFIED COMPLAINT

Plaintiff by its attorneys, REAVIS & McGRATH for its complaint alleges:

FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned plaintiff was a corporation organized and existing under the laws of the State of Ohio.

2. On information and belief, at all times hereinafter mentioned defendant, LONG ISLAND DIAMOND-REO TRUCK CO., INC., a/k/a LONG ISLAND REO TRUCK CO., INC. ("corporate defendant") was a corporation organized and existing under the laws of the State of New York.

3. At all times hereinafter mentioned, defendant, THOMAS A. VINCEL was President of the corporate defendant, its principal stockholder and controlled and dominated the affairs and operations of the corporate defendant.

EXHIBIT "D"

144A 4. Plaintiff is the assignee of certain trust receipts, chattel mortgages and an agreement of financing entered into between defendant and UNIVERSAL C.I.T. CREDIT CORPORATION ("C.I.T." hereinafter). On or about November 3, 1966 C.I.T. duly sold and assigned to plaintiff all of its right, title and interest in and to said trust receipts, chattel mortgages and the agreement of financing.

5. On or about August 28, 1964 defendant made, executed and delivered to C.I.T. a certain agreement of financing. The terms thereof are fully set forth in Exhibit A to the original complaint and the Court is respectfully requested to make reference thereto.

6. On or about the dates set forth in the schedule annexed to the original complaint as Exhibit B, defendant made, executed and delivered to C.I.T. certain chattel mortgages in connection with certain motor vehicles defendant purchased from plaintiff and C.I.T. financed for defendant. The Court is respectfully requested to refer to the schedule annexed to the original complaint as Exhibit B for the details and particulars of each of said chattel mortgages and the motor vehicles mortgaged. A copy of the form of chattel mortgage used in each transaction is annexed to the original complaint as Exhibit C. The Court is respectfully requested to refer thereto for its terms.

7. In connection with the chattel mortgages and the agreement of financing referred to above, defendant made, executed and delivered to C.I.T. certain trust receipts. The Court is respectfully requested to refer to the copy of the form sample of trust receipt which is annexed to the original complaint as Exhibit D.

8. The corporate defendant has defaulted in the payment of said agreement of financing and by reason thereof is justly indebted to plaintiff in the sum of $113,243.45, which although duly demanded has not been paid and plaintiff is entitled to immediate possession of the motor vehicles listed in Exhibit B. Demand has been made upon defendant to deliver possession of all of the motor vehicles to plaintiff and defendant has refused to deliver all of said motor vehicles to plaintiff.

SECOND CAUSE OF ACTION

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9. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" and "2" as if fully set forth and rewritten herein.

10. On or about November 23, 1966, plaintiff and the corporate defendant entered into an agreement, a copy of which is annexed to the original complaint as Exhibit E and defendant executed a promissory note in plaintiff's favor, a copy of which is annexed to the original complaint as Exhibit F. There is now due and owing $110,294.15, plus interest, on said promissory note. The Court is respectfully requested to refer to Exhibits E and F for the terms thereof.

11. Pursuant to the agreement annexed hereto as Exhibit E, plaintiff entered into two agreements dated February 21, 1967 which are referred to as "Security Agreement" (annexed to the original complaint as Exhibit G) and "Consignment Agreement" (annexed to the original complaint as Exhibit H). The Court is respectfully requested to refer to Exhibits G and H for the terms thereof.

146A 12. (a) Pursuant to the aforesaid "Consignment Agreement" and the agreement of November 23, 1966 and the promissory note of November 23, 1966, the following motor vehicles are the property of and belong to the plaintiff, by reason of the facts hereinabove and hereinafter alleged.

MAKE	SERIAL #	MODEL #
Diamond-Reo	569893	DF-502D
Diamond-Reo	569831	DF-502D
Diamond-Reo	570572	DF-502
Trend	101065	CF-6842
Diamond-Reo	571594	DF-402
Diamond-Reo	571819	C-9042
"	571797	C-10164D
"	572067	C-10142
"	571327	DL-730D
"	572131	C-10142
"	572149	C-10142
"	572150	C-10142
"	571810	C-9042
"	572179	C-10142D
"	571883	C-9042
"	571914	GH830DB-ON
"	572200	DH-7132-DOH
"	572298	C-10142
"	572299	C-10142
"	572272	C-10142

(b) Pursuant to the aforesaid "Security Agreement" and the agreement of November 23, 1966 and the promissory note of November 23, 1966, plaintiff is entitled to immediate possession of the following motor vehicles by reason of the facts hereinbefore and hereinafter alleged; and defendant has failed and refused, although duly demanded, to give plaintiff possession of all of same, although possession has been given to plaintiff of some of same.

MAKE	SERIAL #	MODEL #	VALUE
Reo	535385	502L	$3,349.00
Reo	538492	C432	6,075.00
Reo	534517	C502L	4,500.00
Reo	544950	DF502	8,000.00
IHC	4064677	1955	2,000.00
Reo	523378	FSO	2,500.00
Reo	527209	C502	3,500.00
Reo	534791	C432	4,500.00
Reo	566394	E5020-60	11,234.85
Reo	566030	E402-66	6,434.18
Reo	565504	703F-66	14,100.08
Reo	566947	E500-66	7,079.60
Reo	567006	E502-66	7,938.15
Reo	567388	E830-67	10,000.00
Reo	100038	HF300-67	4,107.40
Reo	534848	C432	3,000.00
Reo	527203	C432	3,000.00
White	448342	3028PLT	3,000.00
GMC	T3150	375F	3,000.00
Reo	521249	503L	3,000.00
Mack	--	--	3,000.00
Reo	543127	E503	3,000.00
Reo	548072	E432	3,000.00
IHC	SB567433F	1700	3,000.00
Reo	537297	C502L	3,000.00
IHC	FD1881-G	R192A	3,000.00
Mack	2124	B625X	3,000.00
GMC	310166F	374F	3,000.00
Chev	--	--	3,000.00
GMC	S2434G	555V	3,000.00
Brockway	--	--	3,000.00
Autocar	--	--	3,000.00
Reo	P5300	--	3,000.00
Ford	--	--	3,000.00
	Total (a) and (b)		$351,449.27

13. On or about February 20, 1967, defendant executed in plaintiff's favor a promissory note in the amount of $42,739.56, no part of which has been paid. A copy of said note is annexed to the original complaint as Exhibit I. The Court is respectfully requested to refer to Exhibit I for the terms thereof.

148A 14. Since on or about August 1, 1967, defendant has defaulted in performing the terms of and has breached all of said agreements and promissory notes by converting the following motor vehicles owned by plaintiff to its own use and by, on information and belief, fraudulently concealing and converting the proceeds of the sale of the following motor vehicles:

MAKE	SERIAL #	MODEL #	AMOUNT DUE PLAINTIFF
Diamond-Reo	571819	C9042	$ 8,256.66
Diamond-Reo	571797	C101644D	14,122.16
Diamond-Reo	572067	C10142	7,145.39
Diamond-Reo	572179	C10142D	11,760.61
Diamond-Reo	571914	GH830DB-OH	17,399.76
Reo	567388	E830-67	10,000.00

15. By reason of the aforesaid acts, under the terms of all of the aforesaid agreements and promissory notes, a total of $153,033.71 is now due and owing and plaintiff is entitled to immediate possession of the motor vehicles described in paragraph 12. Although duly demanded, said $153,033.71 has not been paid.

16. The value of the vehicles sought to be replevied in this action is $351,449.27. By reason of the aforesaid, plaintiff is entitled to immediate possession of all of the motor vehicles. Demand has been made upon defendant to deliver possession of the said motor vehicles to plaintiff. Defendant has refused to deliver all of said motor vehicles to plaintiff.

THIRD CAUSE OF ACTION

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1", "2", "10", "11" and "14" as if fully set forth and rewritten herein.

18. Upon the corporate defendant's request and order, plaintiff has manufactured and consigned motor vehicles in the total value of $232,645.71, which amount although duly demanded has not been paid. By reason of the aforesaid, plaintiff is entitled to immediate possession of all of the said motor vehicles. Demand has been made upon defendant to deliver possession of the said motor vehicles to plaintiff and defendant has refused to deliver any of said motor vehicles to plaintiff.

FOURTH CAUSE OF ACTION

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" and "2" as if fully rewritten and set forth herein.

20. On or about August 28, 1965 the corporate defendant executed a promissory note in plaintiff's favor in connection with parts, accessories and equipment sold and delivered by plaintiff to the corporate defendant.

21. There is now due and owing $4,957.09 on account of said note, which, although duly demanded, has not been paid.

FIFTH CAUSE OF ACTION

22. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1", "2", "3", "10", "13" and "14", as if fully set forth and rewritten herein.

23. Defendant Thomas A. Vincel, on or about November 23, 1966 guaranteed to plaintiff the payment of the promissory note described in paragraph "10". There is now due and owing $110,294.15, plus interest, on said promissory note, which, although duly demanded of the corporate defendant, has not been paid.

24. Defendant Thomas A. Vincel, on or about February 21, 1967, guaranteed to plaintiff the payment of the promissory note described in paragraph "13". There is now due and owing $42,739.56, plus interest, on said promissory note, which, although duly demanded of the corporate defendant, has not been paid.

25. By reason of the aforesaid, defendant Thomas A. Vincel is indebted to plaintiff in the sum of $153,033.71, plus interest as provided insaid notes, no part of which has been paid.

Wherefore plaintiff demands judgment as follows:

A. AGAINST DEFENDANT LONG ISLAND DIAMOND-REO TRUCK CO., INC.

1) On the First Cause of Action, possession of the motor vehicles referred to therein and in the event possession cannot be given to the plaintiff, the sum of $113,243.46 or such other amount as represents the difference between $113,243.46 and the amounts provided for in the agreements and notes on the sale of any motor vehicle repossessed or replevied; and

2) On the Second Cause of Action, possession of the motor vehicles referred to therein and in the event possession cannot be given to the plaintiff in the sum of $153,033.71 or such other amount as represents the difference between $153,033.71 and the amounts provided for in the agreements and notes on the sale of any motor vehicles repossessed or replevied; and

3) On the Third Cause of Action, possession of the motor vehicles referred to therein and in the event possession cannot be given to the plaintiff, the sum of $232,645.71 or such other amount as represents the difference between $232,645.71 and the amounts provided for in the agreements and notes on the sale of any motor vehicles repossessed or replevied; and

4) On the Fourth Cause of Action, in the amount of $4,957.09; and

5) Interest as provided in each of the promissory notes referred to in the First, Second, Third and Fourth Causes of Action; and

6) Sheriff's fees in connection with the replevy of any of the motor vehicles or other collateral referred to in the agreements or promissory notes.

B. AGAINST DEFENDANT THOMAS A VINCEL, on the Fifth Cause of Action in the amount of $153,033.71, plus interest, as provided in the promissory notes referred to therein.

C. AGAINST BOTH DEFENDANTS: Plaintiff's costs and disbursements in this action, interest as provided by law, and such other and further relief as may be just and equitable in the premises.

REAVIS & McGRATH
Attorneys for Plaintiff
1 Chase Manhattan Plaza
New York, N. Y. 10005

New York, N. Y.
September 1, 1967

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO, and LIRCO CREDIT CORP., Plaintiffs, -against- WHITE MOTOR CORPORATION and GLENN F. KOMMER, Defendants.	69 Civil 753 NOTICE OF MOTION TO DISMISS FOURTH CAUSE OF ACTION

S I R S :

PLEASE TAKE NOTICE that upon the Complaint, defendants will move at a Motion Term of this Court to be held at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, N. Y. on August 27, 1969 at 10 A.M. or as soon thereafter as counsel can be heard for an Order pursuant to F.R.C.P. 12(b)(6) dismissing the Fourth Cause of Action on the ground that it fails to state a claim upon which relief can be granted and for such other and further relief as may be just and equitable in the premises.

Dated: New York, N. Y.
August 14, 1969

Yours, etc.

REAVIS & McGRATH
Attorneys for Defendants

By _____
A Member
One Chase Manhattan Plaza
New York, N. Y. 10005

TO: HELLERSTEIN, ROSIER & REMBAR
Attorneys for Plaintiffs
19 West 44th Street
New York, N. Y. 10036

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

THOMAS A. VINCEL, et al,

Plaintiffs,

No. 69-C-753

vs.

WHITE MOTOR CORPORATION and
GLENN S. KOMMER,

MEMORANDUM
and
ORDER

Defendants.

- - - - - - - - - - - - - - - - - - - -x

Appearances:

MYRON S. ISAACS, ESQ.
(Messrs. HELLERSTEIN, ROSIER & REMBAR of Counsel)
for plaintiffs

Messrs. REAVIS and McGRATH for defendants

D O O L I N G, D. J.

This is a diversity case and also includes an Automobile Dealers Franchise Act claim under 15 U.S.C. §§1221 and following.

BACKGROUND OF THE ACTION

Plaintiffs are stockholders of a corporation organized at about the end of October 1960 as Long Island Reo Truck Co., Inc., the name of which was changed to

Long Island Diamond Reo Truck Corp. at about the end of May, 1967 and which became bankrupt on a petition filed in its name under Section 4(a) of the bankruptcy act, 11 U.S.C. §22(a). Thomas A.Vincel owned more than half of the voting and non-voting stock of L.I. Reo and Nuno Tardo and William Breen owned about 30 percent of the voting stock and about 36 percent of the non-voting stock. The wives of Messrs. Vincel, Tardo and Breen each owned one share of the non-voting stock. Joseph Rummo owned two shares of voting stock, Rolf Hoeger owned one share of voting stock and Mamie and Patsy Aiello owned two shares of non-voting stock. Lirco Credit Corp. owned 5 shares of voting and two shares of non-voting stock.

Before the organization of L.I. Reo, Thomas A. Vincel and Nuno Tardo, doing business as the Long Island Reo Truck Co., signed a temporary distributors contract with the Reo Division of White Motor Company, and that agreement was apparently succeeded, about March 18, 1959, by a formal "Distributor Selling Agreement" with the L.I. Reo partnership. The L.I. Reo corporation signed a Distributor Selling Agreement with Reo Division, the White Motor Company, under date of January 3, 1961, apparently effective from December 22,

1960. Under date of March 1, 1963, L.I. Reo signed, effective from January 2, 1963, a dealer agreement with the White Motor Company, Reo Motor Truck Division. Under date of February 19, 1965, L.I. Reo entered into a Dealer Selling Agreement dating from December 9, 1964, with Lansing Division, the White Motor Company; it was amended by an instrument executed between White Motor Corporation and L.I. Reo on February 14, 1966, and was further amended under date of December 1, 1966, by agreement between Lansing Division of White Motor Corporation and L.I. Reo, and still further amended under date of June 16, 1967, by instrument executed between L.I. Reo and Diamond Reo Truck Division, White Motor Corporation. All of the agreements between L.I. Reo (and the predecessor partnership) and White were executed on behalf of L.I. Reo by Thomas Vincel except the amendment of February 14, 1966.

White Motors Corporation had acquired the Reo Division effective June 5, 1957 and the Diamond Division effective April 1, 1958, dates preceding that on which the L.I. Reo partnership first became a Reo distributor. Apparently, L.I. Reo financed its truck purchases with C.I.T. Corporation and White underwrote L.I. Reo's financing with C.I.T. under date of December 27, 1962 by agreeing to take over all L.I. Reo's

paper on demand if L.I. Reo defaulted in its obligations to C.I.T. At the times materially in question there was in effect an Agreement for Wholesale Financing between L.I. Reo and C.I.T. dated August 28, 1964. In addition, L.I. Reo's substantial parts business had been financed on an open running ledger account between L.I. Reo and White. L.I. Reo executed a note to White in the amount of $54,520.43 dated October 28, 1965, covering a portion of the parts account, which in October 1965 had reached the $95,000 level.

By the first of the critical dates involved in the present action, November 1966, the indebtedness on the October 28, 1965 note had been reduced to about $18,180.00.

In late October or early November 1966, L.I. Reo was "out of trust" with respect to eight vehicles purchased on various dates between July 23, 1965, and September 21, 1966 (representing an aggregate principal obligation of $89,780.00). The expressed obligation of White under the December 27, 1962 letter agreement with C.I.T. was that White would purchase the floor plan obligations covering L.I. Reo's inventory of trucks upon any default by L.I. Reo. On the basis of an oral telephone demand made upon Glenn Kommer, the treasurer of the Diamond Reo truck division of White, White

became the assignee of the trust receipts, chattel mortgages on new and used floor-planned trucks, and, apparently, of the 1964 financing agreement between L.I. Reo and C.I.T., as well as of the obligations with respect to the vehicles out of trust, upon the payment to C.I.T. by White of $476,850.24. That amount included the $89,780.00 for vehicles allegedly "out of trust", $268,653.01 for new trucks floor-planned and $118,416.50 for used trucks floor-planned.

At the same time, in November 1966, the running account for parts was in debit balance in the neighborhood of $100,000.00, about $18,180.00 remained unpaid on the note of October 28, 1965 and a little over $90,000.00 was apparently due in respect of L.I. Reo obligations taken over by White from C.I.T., an amount approximating but not (apparently) necessarily related to the amounts with respect to the vehicles that were "out of trust". Exactly what the posture of the company's accounts was at this juncture is left uncertain in spite of the voluminous papers, but it appears that at that time L.I. Reo had no "financing" to take the place of C.I.T.'s other than White itself, and that the indebtedness actually due, although not adequately explained in the papers, approximated $200,000.00.

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What next occurred marks essentially the beginning of the matters charged on both sides in the complaint and counterclaim as the wrongs which each party allegedly committed upon the other. At this point, in effect, White assumed an active and positive role in the oversight of L.I. Reo's business, and in the actual conduct of its operations. The initiation of White's role was marked by the making of an elaborate agreement under date of November 23, 1966.

That agreement recited as parties White, L.I. Reo and Messrs. Vincel, Tardo and Green; it opened with a recitation of the dealership, L.I. Reo's financing of its purchasers of new and used truck through C.I.T., White's December 27, 1962 agreement to buy L.I. Reo's obligations from C.I.T. if they were not met when due, C.I.T.'s demand that White purchase all of L.I. Reo's obligations, and White's agreement to do so; then followed the recitals that L.I. Reo was indebted to White for some $90,000 worth of the obligations taken over from C.I.T. which had been accelerated by default, and that there was a further indebtedness of L.I. Reo to White on open parts account amounting to $105,669.37 on November 23, 1966. The agreement then stated that L.I. Reo and the shareholders had asked White to forbear from presently demanding

payment as purchaser of L.I. Reo's obligations from C.I.T. and on the open parts account. (In addition, the agreement dealt with the balance of $18,180 due on the $54,520.43 note of October 28, 1965).

The agreement opened with a reciprocal release under which (a) White released L.I. Reo, the signatory shareholders and all other shareholders who joined the agreement and (b) L.I. Reo and the shareholders released White and its Divisions from all obligations except those dealt with in the agreement and collateral to it and except for the balance due on the 1965 note. The three signing shareholders, Vincel, Tardo and Breen, agreed to use their best efforts to get the other shareholders of L.I. Reo to make themselves parties to the agreement, and it was provided that the agreement would not become effective until the reciprocal release was executed by at least 90 percent of all of the shareholders of L.I. Reo holding any class of its stock.

The agreement then recited White's take-over of the L.I. Reo obligations from C.I.T., and L.I. Reo agreed that White had all the rights of C.I.T. on the obligations. L.I. Reo represented that the vehicles listed in Exhibit D annexed to the agreement were covered by mortgages or trust

receipts held by White as assignee of C.I.T., and L.I. Reo represented that it had not sold or otherwise transferred the vehicles and had received the deposits or other money for the vehicles from retail purchasers as set forth on the list. The agreement then provided that the shareholders would enter into a voting trust of all of the shares of stock owned by them and their families in L.I. Reo and in four other companies - Lirco Enterprises, Inc., Lirco Credit Corp., Trojan Servicing Corp. and Lirco Truck Leasing Corp. The voting trustee was to be "a person designated by White, to wit, Glenn Kommer." The trust was to continue until L.I. Reo had fully paid the obligations dealt with in the agreement, and if 90 percent of each class of stock did not enter into the trust, White could declare the agreement at an end ab initio. It was next provided that if L.I. Reo was able to obtain a loan of $50,000 on condition that it put up as collateral a majority of the voting stock of Lirco Enterprises, Inc., such stock to be placed in the voting trust to be controlled by the lender, then White agreed to release the shares from the Kommer voting trust provided Lirco Enterprises first reduced the total rent paid by L.I. Reo under leases covering the property in Woodside and Hauppauge to a maximum aggregate

rental of $3,000 a month for a period equal to the term of the voting trust.

The agreement next provided that L.I. Reo would pay $3,030 a month until the balance of $18,180 due on the $54,000 1965 note was paid off. In connection with the payment of the note, L.I. Reo agreed to return to White about $20,000 of current excess parts, acceptance of the parts to be subject to White's approval and the credits allowed for the parts returned to be used to reduce the $18,180 due on the note.

It was next provided that L.I. Reo would simultaneously with the signing of the agreement execute a five year 6 1/2% note, guaranteed by Vincel, for $195,837.50, being the sum of the amount due on the open parts account and the $90,168.20 due in respect of unpaid obligations which White had acquired from C.I.T. The note was to be paid off by adding $500 to the net invoice price of each truck billed to L.I. Reo when the truck was delivered to the retail customer of L.I. Reo by White. All amounts received by White from C.I.T. as a result of L.I. Reo's release to White of its reserves with C.I.T. were to be credited on the note. All then existing amounts due from White to L.I. Reo and all

amounts thereafter accruing as due to L.I. Reo from White during the term of the $195,000 note by reason of warranty claims were to be credited on the note.

The note was to be secured by a chattel mortgage or other security instrument on all new and used trucks then or thereafter owned by L.I. Reo, except that White was to subordinate its security interest in favor of persons holding purchase money security interests in after-acquired inventory. L.I. Reo also agreed to execute a chattel mortgage or other security instrument on all parts inventory. L.I. Reo agreed to do its bes t to get financing for working capital purposes by factoring its present parts inventory under a warehouse receipt or other program, and, in that event, White agreed to release its security interest in the present parts inventory. L.I. Reo also agreed to use its best efforts to finance its present and future accounts receivable for cash for use as working capital, and agreed that all future parts ordered from White would be ordered C.O.D.

It was provided that no new truck should be ordered by L.I. Reo from White and that White would not have to deliver any trucks unless the order was accompanied by satisfactory proof that L.I. Reo had an identifiable retail customer

for each truck, and that the customer had a financing commitment to cover his purchase or would pay cash upon delivery. White was to have no obligation to place a truck order into production until it received such proof. White was to transport each finished truck to New York at L.I. Reo's expense and to deliver it to White's own regional representative, retaining title in White's regional inventory. At L.I. Reo's request a truck could be delivered to a body shop at L.I. Reo's cost for body work. Possession of the truck was to pass from White directly to the retail customer, and only when White received cash or the check of a financial institution or a retail customer made payable to L.I. Reo and endorsed to White. If a check or cash so received plus the retail customer's down payment exceeded White's total invoice price for the truck (including the cost of delivery from the point of shipment), White was to transmit to L.I. Reo the amount of such excess. L.I. Reo was required to establish an escrow bank account for the deposit of down payments received by L.I. Reo from retail customers on new trucks ordered.

It was next provided that so long as the notes of $54,000 and of $195,000 remained to any extent unpaid, the shareholders would not in any way directly or indirectly engage in a business competitive with L.I. Reo or its affiliates in

any counties in the greater metropolitan area including Putnam, Orange, Rockland, the three North Jersey counties and Fairfield County, Connecticut.

The November 23 agreement was signed by White, by Vincel individually and as president of L.I. Reo and by Messrs. Tardo and Breen and the separate form of "Release by Other Shareholders" was signed by Mamie Aiello and Patsy Aiello although only Patsy Aiello appears to have acknowledged his execution of the release. In addition, Henry R. Lanz signed and acknowledged the form but it appears from plaintiff's answer to interrogatory one that the shares of Lanz had been acquired by Messrs. Vincel, Tardo and Breen over a three year period ending October 5, 1966 and that the Lanz shares are included in the enumeration of the Vincel, Tardo and Breen shares in Paragraph Three of the complaint. It appears that shares owned by Leon Maganza, five shares of A stock and two shares of B stock (later split into six shares), were not brought into the "release by other shareholders" but that those shares were, according to plaintiff's answer to the first interrogatory, transferred to Lirco Credit Corp. by Leon Maganza in January 1969 against payment of $3,000. The three B shares of Grace Vincel, Irene Tardo

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and Virginia Breen were not brought into the release by other shareholders. It appears from plaintiff's answer to defendant's interrogatory one that the three shares had been issued on November 23, 1966 against payments of $1,000 a share made on November 15, 1966.

A form of voting trust agreement between Glenn F. Kommer as trustee and the signatory shareholders of L.I. Reo, Lirco Enterprises, Inc., Lirco Credit Corp., Trojan Servicing Corp., Inc. and Lirco Truck Leasing Corp. was executed under date of December 29, 1966, but the signatures to the agreement and the accompanying consent and release were acknowledged on November 23, 1966 by Thomas Vincel, Nuno Tardo, William Breen, Michael Vincel and Henry R. Lanz. Irene Tardo, Virginia Breen and Grace Vincel acknowledged their signatures to the voting trust agreement and, in the case of Grace Vincel, to the Consent and Agreement of Non-signatory Shareholders on November 25th; other signatures, those of Joseph Rummo, Rolf Hoeger, Patsy Aiello and M. Lanz, all "non-signatory" shareholders, were acknowledged or witnessed at various dates in December 1966. Patrick Madden and Lillian Healey, apparently stockholders of Lirco Enterprises, Inc., appear to have signed the form of Consent and Agreement of Non-signatory Shareholders

but not ever to have acknowledged their signatures. John F. Healey, as president of J.F. O'Healy Construction Corp., presumably as a shareholder of Lirco Credit Corp., signed the voting trust agreement and his signature was attested by Lillian K. Healy as secretary; there is an apparently imperfect and undated acknowledgement of execution by Mr. Healy. Justina Vincel, presumably as a shareholder of Lirco Enterprises, Inc. acknowledged signing the voting trust agreement under date of December 12, 1966. Glenn F. Kommer acknowledged his signature to the voting trust agreement under date of December 29, 1966 (probably), and that, very likely, accounts for the date assigned to the agreement. Leon Maganza did not sign the agreements at all, and, although Mamie Aiello signed the Consent and Agreement of Non-signatory Shareholders, her signature was neither witnessed formally nor acknowledged. Exhibit C of the voting trust agreement indicates that Leon Maganza had entered into a contract to sell his stock to Thomas Vincel, Nuno Tardo and William Breen on August 30, 1966, and that his stock certificates were to be held in escrow until the installment purchase price had been paid in full. Answer #1 to the first interrogatory of defendants to

plaintiff indicates that the payments may have been completed in January 1969 and the certificates then transferred to Lirco Credit Corp.

The voting trust agreement repeats essentially the recitals of the November 23, 1966 agreement, the affiliation of the other corporations affected by the trust with L.I. Reo, the connection of all of the corporations with the continuity and stability of one another, and the provision in the November 23, 1966 contract for the creation of a voting trust, and it then provides for the deposit of shares by the stockholder parties to the agreement. Deposited shares were to include shares not only of L.I. Reo but of Lirco Enterprises, Inc., Lirco Credit Corp., Trojan Servicing Corp. and Lirco Truck Leasing Corp. After providing for the issuance of voting trust certificates for deposited shares, it was provided that no dividends or other distribution should be paid by any of the corporations during the agreement, and that none of the corporations would be wholly or partially liquidated without the previous written consent of the signing parties, the voting trustee to act as distributing agent if there were any such distribution; it was provided that if the trustee resigned White would designate a successor, and that if the

trustee or any successor trustee left White's employment, White was empowered to name a new trustee. The trustee had exclusive voting rights in the corporations whose shares were deposited.

Paragraph Eight of the trust authorized the trustee to cause L.I. Reo's Board of Directors to appoint a general manager for L.I. Reo of the trustee's choice, his salary to be paid by the trustee who was to be reimbursed by L.I. Reo in the amount of $8,400 a year or such lesser salary as the manager received. There was a provision for releasing stock of Lirco Enterprises, Inc. from the voting trust, if necessary to secure a working capital loan of $50,000 for L.I. Reo but only after Lirco Enterprises, Inc. first agrees to reduce the total rent paid by L.I. Reo for the Woodside and Hauppauge properties to a maximum of $3,000 a month for the term of the voting trust agreement (subject to adjustment for taxes). Depositing and consenting shareholders agreed not to put L.I. Reo into bankruptcy or bring about an assignment for the benefit of its creditors or otherwise to seek debtor-relief by court action. The voting trust was to continue until L.I. Reo paid off the note of $18,180 (balance due) and the note of $195,837.50 and had satisfied all obligations to

White as assignee of the C.I.T. obligations taken up under its agreement of December 27, 1962, with C.I.T. The trustee was not to have any compensation, but he was to be reimbursed for reasonable expense, including professional expense, and was not to be liable for anything arising out of the voting trust agreement except for loss or damage caused by his willful misfeasance or gross negligence; the trustee was not required to give fidelity bond.

It was provided that neither the trustee nor the general manager was disqualified from being an employee, officer or director of White, and that no contract or transaction between the various corporations, whose stock was being deposited, and White should be "affected or invalidated by reason of the fact that White is in any way interested in such transaction or contract."

Deposits of shares were irrevocable but provision was made for death. It was provided that if L.I. Reo did not obtain the $50,000 working capital loan, the trustee could then sell and lease back or otherwise encumber Lirco Enterprises' properties or its stock to get a working capital loan of $50,000 for L.I. Reo. It was provided that the trustee could nullify the voting trust if any stockholder of L.I.

Reo, Lirco Enterprises, Lirco Credit Corp., Trojan Servicing Corp. or Lirco Truck Leasing Corp. refused to consent to the execution of the agreement by the signatory shareholders and failed specifically to agree that he would be bound by the provisions of certain paragraphs of the voting trust - those relating to the suspension of dividend payments and other distributions, to the trustee's exercise of voting powers on the stock, to the issuance of new shares by the corporations involved, to the employment of the general manager, to the provisions for the working capital loan, to the term of the agreement, to the trustees right to incur expenditures and charge them back to the benefited corporation, to the provisions protecting the trustee against damage claims except for willful misfeasance or gross negligence, and to the provisions respecting contracts or transactions between White and the L.I. Reo and affiliated corporations.

In late January 1967, apparently, White and Samuel Antelis reached an agreement under which Antelis would work at L.I. Reo commencing February 6, 1967, evidently for a salary of $10,700 a year. Under date of January 23, 1967, Kommer, signing as treasurer of the Reo Division, wrote Thomas Vincel as president of L.I. Reo calling his attention to paragraph 8 of the voting trust agreement dated December 29, 1966,

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and requesting Vincel promptly to call meeting of L.I. Reo's Board of Directors and to appoint Mr. Samuel Antelis as general manager of L.I. Reo. The letter advised Vincel that Antelis' salary exceeded the $8,400 for which White looked to L.I. Reo for reimbursement. A meeting of the directors of L.I. Reo was held on waiver on February 6, 1967; Messrs. Thomas Vincel, Nuno Tardo and William Breen were present, and a resolution was adopted appointing Samuel Antelis general manager and authorizing the corporation's officers to pay $700 a month on account of Mr. Antelis' salary commencing with February 1967.

It appears that while apparently L.I. Reo was, at least at the beginning, billed monthly for $700 on account of the services of Antelis, the bills were not paid. It appears also that the voting trust agreement was brought to an end in late August of 1967 through the resignation of Glenn Kommer and the tender back to the depositing stockholders of their stock certificates at that time with the statement, over Kommer's signature, that White did not intend to appoint a successor trustee as of that date, apparently August 28, 1967.

On or about February 21, 1967 an additional demand note for $42,739.56 (Dated February 10, 1967) was executed by

L. I. Reo, by Thomas Vincel, and, apparently, was personally guaranteed by him. The note was in substantially the same form as the note for $195,837.57 executed and acknowledged on November 23, 1966, in connection with the agreement of that date. Both notes required that they be secured by a chattel mortgage or other security instrument acceptable to White (which, however, was, upon request, to be subordinated to the security interest of persons holding purchase money security interests in after-acquired trucks) on all present and future truck inventory that would assure White a floating lien on all new and used trucks acquired by L.I. Reo after the date of execution of the note. The notes further provided that, as additional security for the notes, L.I. Reo would execute in favor of White a chattel mortgage or other security instrument acceptable to White on all its present parts inventory, such lien to be released if L.I. Reo secured working capital financing by factoring its present parts inventory under a warehouse receipts or other suitable program.

Apparently, a consignment agreement was signed under date of February 21, 1967, and in addition, a security agreement, which, however, appears to have referred only to the note for $195,837.57 (defendants' answers to plaintiffs'

first interrogatories, Exhibit F). The instrument granted a specific security interest in motor vehicles listed on a schedule A attached to it and accessories and parts listed in a schedule B attached to it (not reproduced in the Exhibit F mentioned above). The security interest was in terms to extend to all other motor vehicles, accessories and parts of whatever description then owned or thereafter acquired by L.I. Reo and all proceeds of such property. L.I. Reo was to keep the property free of all encumbrances, and it was not to transfer nor suffer to be transferred any interest in the instrument or the properties secured by it, except that L.I. Reo could sell the trucks and parts at retail to purchasers for value in the ordinary course of business, all proceeds of sale to be accounted for and paid to White forthwith to the extent of L.I. Reo's outstanding obligations to White. The security instrument provided that, if L.I. Reo defaulted in the performance of any term of the Agreement of November 23, 1966, or the $195,000 note, or the security instrument, White was authorized to enter L.I. Reo's premises, take possession of the secured property, and sell it with or without notice at private or at public sale, at either of which White might itself purchase. The security instrument of February 21, 1967

presumably is the instrument called for by paragraphs 6 and 7 of the Agreement of November 23, 1966. There is some indication that the $42,739.50 note of February 10-21, 1967, referred to an indebtedness arising out of vehicles allegedly sold "out of trust" and not accounted for to White (see August 21, 1967, letter in defendant's response of May 4, 1970 to plaintiff's document demand of March 17, 1970).

Apparently, commencing somewhere around the middle of March, 1967, and ending somewhere around August 21, 1967, steps were taken to obtain working capital financing for L.I. Reo to cover parts acquisition from the Bank of Commerce in New York through a field-warehousing arrangement with St. Louis Terminal Field Warehouse Company. The financing was to be secured by the new and existing inventory of parts, and to be backed up by White's undertaking to Bank of Commerce to purchase any parts which Bank of Commerce acquired in pursuance of the field-warehousing arrangement. The financing was not consummated, but it was still under discussion in late July 1967.

Possibly indirectly related to the field-warehousing project was performance of paragraph 5 of the Agreement of November 23, 1966. Under it L.I. Reo agreed to return

approximately $20,000 of current excess parts to White, subject to White's approval of acceptance, the credit for returns accepted by White to reduce the note of October 28, 1965, in the amount of $54,520.43, on which $18,180.00 was outstanding on November 23, 1966. In about February of 1967, perhaps under date of February 3, 1967, White credited L.I. Reo with $14,421.90 for returned excess parts inventory, less about $1,200 of charges for handling and freight; the net credit was $13,222.91 rather than $20,000.00. About $7,000 of returned parts were rejected as obsolete and shipped back to L.I. Reo. See p.9, supra, lines 5 et seq.

Plaintiffs do not deny that before November 23, 1966, L.I. Reo was "out of trust" on eight vehicles involving approximately $89,000 (see defendant's answer 14(a) and (c) to plaintiff's interrogatories and plaintiff's answer 6 to defendant's further interrogatories). The episode which precipitated the ultimately total rupture of relations between White and L.I. Reo was White's acting upon information received in mid-August 1967 that L.I. Reo had disposed of a number of trucks, having an invoice value to L.I. Reo from White of about $68,000, without accounting for and paying over the proceeds of sale to White, thus in White's contention, converting the trucks

and violating the terms of the February 21, 1967 security agreement. White thereupon sued L.I. Reo in the Supreme Court, County of New York for $227,675 (based on accelerations, etc.) and seeking also recovery of possession of all the trucks covered by the security agreement of February 21, 1967. The action appears to have been commenced on or about August 25, 1967 as N.Y. Co. No. 14135 of 1967. See pp.10-11,pp.21-22 supra.

Exhibit C annexed to plaintiff's answers to the first interrogatories of defendant indicates that for the seven accounting periods (five of them complete fiscal years) from January 1, 1960 through September 30, 1966, net losses after tax were shown for five of the seven periods; the aggregate of losses after tax exceeded the two years of profitable operation. Except for the year ending September 30, 1964, sales of new trucks showed an increase year by year, and sales of used trucks generally followed the same trend, although there were actually reductions in sales volume in the years ended September 30, 1964, and September 30, 1965, and the sales of used trucks in the year ending September 30, 1966 were only narrowly greater than those in the year ending September 30, 1963. Sales of parts generally increased over the years, except that there was a sharp peaking up in sales

for the year ending September 30, 1962, followed by a modest reduction in such sales in the succeeding year before increases in sales were resumed. In all years, sales of used trucks were more often a loss than a gain, the exceptional period being that of ten months ending September 30, 1961. According to the balance sheets for the years ending September 30, 1963, 1964, 1965 and 1966, total current liabilities exceeded total current assets in each year.

THE COMPLAINT

The complaint commences by identifying the plaintiff stockholders of L.I. Reo and L.I. Reo, and describes its relation to White, describes the relationship of Kommer to White and describes White's three truck divisions and the combination of the Reo and Diamond T divisions, and identifies L.I. Reo as a dealer first in products of Reo Division and later in products of the Diamond Reo Division products "for the counties of Queens, Nassau andSuffolk" (Paragraphs 1 through 13). Paragraphs 14 through 32 (which are repeated and realleged in each of the second through the sixth causes of action) then charge that White and Kommer beginning in November 1966 planned and conspired to acquire control of L.I. Reo and its financial affairs, to destroy its working capital, acquire its assets,

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drive it out of business and injure its shareholders(14). It is then alleged that White required Vincel, Tardo and Breen to make the agreement of November 23, 1966 (15) which in turn required them and the affiliates of L.I. Reo to deposit their shares in a voting trust, the trustee of which was defendant Kommer, and to execute the $195,000 note and to promise that neither they nor their families would compete with the business of L.I. Reo or its affiliates so long as L.I. Reo continued indebted to White (16). Further, it is alleged, White did require all the stock of L.I. Reo and its affiliates to be deposited under the December 29, 1966, voting trust (17), which in turn provided that Kommer, the voting trustee, might cause L.I. Reo's board to appoint a general manager of L.I. Reo acceptable to Kommer and to be paid by Kommer (19), and pursuant to that requirement, Kommer selected Antelis to be general manager of L.I. Reo pursuant to a resolution adopted by L.I. Reo's directors which appointed Antelis general manager to serve at the pleasure of Kommer (20), which, it is alleged, Antelis did, serving at the pleasure and under the direction and supervision of Kommer and "acted at all times as the agent and employee of defendants WHITE MOTOR and KOMMER" (21). It is alleged that all the proceeds of sales

of trucks and parts were turned over to Antelis' control and that Antelis had exclusive power to apply the money (23), and that L.I. Reo and its shareholders relied on White and Kommer to conduct L.I. Reo's affairs in good faith and in the best interests of L.I. Reo, its creditors and stockholders (24). It is then charged that White and Kommer did not act in the best interests of L.I. Reo, its creditors and stockholders but conducted the company's affairs, and caused Antelis to conduct them, to effectuate the plan and conspiracy while at the same time being in the position to claim that L.I. Reo had breached its agreements with White (25). The accused acts are specified in the first answer to the defendant's initial limited interrogatories: (1) Appointing Kommer as trustee knowing that his office with White conflicted with his obligations to the stockholders of L.I. Reo with intent that Kommer would subordinate the stockholder interests of L.I. Reo to the [creditor-supplier] interests of White; (2) appointing Antelis general manager of L.I. Reo knowing that he was not qualified for the post by experience and intending that he would subordinate L.I. Reo's interests to those of White; (3) refusing to honor valid warranty claims of L.I. Reo and draining L.I. Reo's cash by disallowing valid claims, failing

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to credit L.I. Reo's account for properly allowable amounts, refusing to pay cash for warranty work done on trucks sold by White direct and by dealers other than L.I. Reo itself, requiring L.I. Reo to pay cash on delivery for parts ordered to replace defective parts in new vehicles, and threatening to cancel L.I. Reo's franchise if it failed to do warranty work on trucks sold through other dealers; (4) requiring Reo to pay cash on delivery for all parts orders but allowing only credits for returned parts found to be defective; (5) denying L.I. Reo routine and ordinary customer assistance given to other dealers of White; (6) avoiding contact and communication with L.I. Reo personnel so that normal relationships prevailing between manufacturer and dealer were impaired to L.I. Reo's detriment; (7) giving data on L.I. Reo truck sales to "competing White dealers" thus reducing L.I. Reo's service work; (8) pirating customers from L.I. Reo by making direct factory sales and threatening to cancel the dealership when L.I. Reo complained; (9) in the period from February through August 1967 White and Kommer through Antelis caused L.I. Reo to overdraw its bank account, incur penalties for failure to pay federal taxes, overpay certain creditors, and allocate company funds improperly, so that L.I. Reo could not meet its

contractual obligations to White, to other creditors and to customers and its cash position was impaired and destroyed; (10) between March and July 1967 sabotaging a program to set up a working capital financing program involving Bank of Commerce and the St. Louis Terminal Field Warehouse Company; (11) between April and August 1967 requiring L.I. Reo to pay by certified check for all parts picked up from White's Newark warehouse; (12) requiring L.I. Reo in April 1967 to pay over to White the proceeds of insurance on a stolen truck owned by L.I. Reo, although the cash was needed in the L.I. Reo business; (13) in August and September 1967 placing armed guards on the L.I. Reo premises and threatening plaintiff Vincel with arrest and commencing an action in the Supreme Court, first against L.I. Reo in White's name and later against L.I. Reo and Vincel, based on claimed breaches of contract and conversion of motor vehicles charged to L.I. Reo although the acts were done when White and Kommer and their agent Antelis controlled and managed L.I. Reo, attaching the motor vehicles, parts and bank accounts of L.I. Reo, and forcing L.I. Reo to discontinue business and file a bankruptcy petition; (14) in September 1967 White and Kommer refused to release money from the L.I. Reo bank accounts that had been

attached and thereby caused the arrest of plaintiff Vincel; and (15) beginning before November 1966 and continuing to the date of the answers to interrogatories, conspiring to combine White's major truck divisions and to drive out of business the largest dealers, including L.I. Reo, who sold only Diamond T or Reo or Diamond Reo trucks so as to circumvent White's contractual and fiduciary obligations to L.I. Reo and its shareholders.

It is next alleged that White, aided by Kommer, in order to effectuate the conspiracy, to evade the contractual obligations of White to L.I. Reo and the trust obligations of White and Kommer to the plaintiffs, to destroy the business of L.I. Reo, and to cause injury to plaintiffs, claimed that its own acts, and those of its agents Kommer and Antelis in conducting the affairs of L.I. Reo, constituted breaches by L.I. Reo of its agreements with White (26); and the answer to the second limited interrogatory specifies the acts of Kommer, White and Antelis which were used as breaches, that is, (1) the claimed default in the C.I.T. financing agreement of August 28, 1964; (2) the failure to pay the balance of $110,294.15 due on the $195,000 promissory note; (3) the alleged failure of L.I. Reo to give White possession of

numerous vehicles pursuant to the security agreement of February 21, 1967 and the consignment agreement of the same date and the Agreement and promissory note of November 23, 1966; (4) the failure of L.I. Reo to pay the February 10, 21, 1967 note in the sum of $42,739.56; (5) the claimed conversion of six (or seven or eight) motor vehicles in August 1967; (6) the failure of L.I. Reo to pay the balance due on the note of August 28, 1965 (embraced in the November 23, 1966 agreement). It is then alleged in paragraph 27 that using the breaches as a pretext White, assisted by Kommer, declared L.I. Reo to be in default, demanded possession of and seized all trucks and parts owned and possessed by L.I. Reo, demanded full payment of monies allegedly owing to White and took steps to enforce the demands, as a result of which L.I. Reo was forced out of business (27). It is then alleged that the business of L.I. Reo was large, flourishing and growing, its prospects excellent (28), and that, in reliance on its contractual arrangements with White and Kommer, L.I. Reo and its affiliates bought trucks and parts and made substantial capital investments (29) but that as a result of the acts of White and Kommer, which were willful misfeasance and gross negligence, L.I. Reo could not fill orders on hand for new trucks

and parts or negotiate future sales of trucks and parts, its working capital and good will were destroyed, and L.I. Reo was forced out of business and into bankruptcy (30). It is It is then asserted that plaintiffs as holders of all the stock of L.I. Reo were directly damaged by the destruction and bankruptcy of L.I. Reo (31), and that the defendants' acts were breaches of the contractual relationships between the plaintiffs and the defendants (33).

What plaintiffs intend by the claim that White and Kommer charged L.I. Reo with responsibility for acts really attributable to Kommer and Antelis is most easily illustrated by reference to the set of events which precipitated the August 25, 1967, State Court action with the attachment of bank accounts and replevy and possession-taking of the trucks and parts by White. The precipitating event was the alleged conversion of a number of trucks, and three of those trucks, as appears from the complaint in the State Court action and from defendant's answer 18 to plaintiff's further interrogatories, were trucks serial numbers 571797, 572067 and 572063. Paragraph 11(a) of the original complaint in the State Court action charged L.I. Reo with converting (among others) Diamond Reo trucks 571797 and 572067 (representing, allegedly, an

amount due White of $21,267). In plaintiff's Exhibit G to its answers to interrogatories, the master list of trucks in L.I. Reo's possession on November 23, 1966 and subsequently acquired by L.I. Reo, it is stated that truck 571797 was bought for $14,122.16, was financed by White in that amount and that the proceeds of the sale were received on August 2, 1967 from the customer, "Combined Waste", in the amount of $20,747.40 with no trade-in. No payment to the financier (White) is shown, but instead the statement is made "Antelis failed to pay for truck". Similarly, truck 572063 is shown in Exhibit G as purchased for $7,145.39 under date of July 14, 1967 from White and financed by White in the full amount of the purchase price, it is stated that the truck was sold to Albert Stegman on July 31, 1967, for $9,996.00 without trade-in allowance, and no payment to the financier (White) is shown; the statement is made "Antelis failed to pay for truck". The entry with respect to truck 572063 is essentially the same except that there on a purchase price of $23,440 a trade-in of $10,000 was allowed but again, the failure to pay the financier (White) is shown and the statement is made "Antelis failed to pay for truck". At the same time, answer 7 to the further interrogatories of the defendants makesclear

that the plaintiff's position is that during the entire period in question, the sales prices of trucks were quoted and negotiated by plaintiff Vincel and the salesmen who were employed by L.I. Reo, that the individual who was responsible for quoting trade-in allowances was plaintiff Vincel and that orders for truck bodies were made by and signed for by Thomas A. Vincel. Hence it will be seen that a central issue in the case on the facts will be the question of who in terms of physical handling and personal responsibility received the customer's pauments and, physically and in personal responsibility terms, did the things which brought about the disposition to others than White of the proceeds of the sales. To whom were the proceeds of the sales disbursed, by whose order, and by whose hand?

What emerges clearly from the first cause of action and the background of uncontested facts as furnished by the complaint and the answers to the interrogatories, is that the accused acts, if damaging, in their immediate and direct impact damaged the L.I. Reo business, the affairs and the prospects of L.I. Reo and that the detriment, if any, to the plaintiff stockholders was a reflex of and measured by the extent of their interests in L.I. Reo as stockholders. Hence, the

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first cause of action clearly raises the question whether the contractual links between White and Kommer and the stockholders signing the agreements of November 13th and December 29th, 1966, either as direct contracting parties or as assenting parties, and the relationships of Kommer, and possibly White, to the stockholders as voting trustee, and employer of the voting trustee, have the effect, in the context of the present case, of giving the stockholders individual rights of action against White for damages which, if real, fell upon L.I. Reo and, obviously, were actionable by L.I. Reo (or its trustee in bankruptcy) except to the extent that L.I. Reo's rights of action had been realized upon, or released without realization.

While the first cause of action (and in consequence all of the others) is cast in the general and meaningless form of "conspiracy," the contention, more directly put, is that White, acting through Kommer and Antelis, assumed the management of L.I. Reo by means of the voting trust arrangement, and then, by using its control over the credit that it could withhold from L.I. Reo and by acts of positive mismanagement, ruined the business of L.I. Reo. Underlying the whole first cause of action is the half-spoken idea that there was

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a fundamental conflict of interest between White as creditor and source of supply on the one hand and L.I. Reo as debtor and purchaser on the other. The contention must be that, in consequence, White in pressing for and obtaining the November 23, 1966 Agreement, the voting trust and the close controls over the conduct of L.I. Reo's day-to-day and cash flow activities (including the February 1967 security, consignment and note arrangements) overreached itself and inevitably if not purposefully conducted the affairs of L.I. Reo in the interest of White and not in the interest of L.I. Reo, that White assumed fiduciary responsibilities when it became the controlling person in L.I. Reo. Nominally, the first cause of action emphasizes the various agreements and formal breaches of the agreements (including breaches allegedly traceable directly or indirectly to White's own restrictions on L.I. Reo's management) and thus ... presents the idea that the alleged misconduct constituted breaches of duties undertaken directly to the plaintiff stockholders (32, 33); but the unchangeable gist of the wrongs alleged is damage to the business, property and prospects of L.I. Reo and only consequentially were plaintiffs disadvantaged, to the extent of and by reason of their interest in L.I. Reo through their stock ownership.

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The second cause of action adds no assertions of fact. It characterizes the acts alleged in the first thirty-two paragraphs as involving White and Kommer in the assumption of fiduciary obligations to the stockholders of L.I. Reo to act in L.I. Reo's best interest and in the best interest of the stockholders in managing L.I. Reo, whereas, it is charged, White and Kommer breached their fiduciary obligations, acted in their own interests and against those of L.I. Reo and its stockholders, subordinated the interests of L.I. Reo and its stockholders to White's and Kommer's own interests, and committed acts detrimental to the stockholders of L.I. Rel. The answer to the fifth limited interrogatory is explicit that the misconduct charged in paragraph 37 is the same misconduct charged in paragraph 25.

The third cause of action again counts on the facts alleged in paragraphs 1 through 32 but emphasizes (40, 41) that the shareholders of L.I. Reo and L.I. Reo itself were coerced into signing the various agreements by threats of White and Kommer to cancel the franchise and to cause criminal proceedings to be brought against L.I. Reo's officers unless they executed the agreements. Paragraph 41 is substantially paragraph 14, and paragraph 40 adds nothing when paragraph 14 is read in the light of plaintiff's answers 11 (f) and 12 to

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the defendant's first interrogatories.

The fourth cause of action, the defendants have made the subject of a separate motion to dismiss essentially on the ground that it peculiarly alleges injury solely to the corporation and not to the plaintiffs. The fourth cause of action repeats paragraphs 1 through 32 from the first cause of action, paragraphs 36 and 37 from the second cause of action (charging breach of fiduciary duty owed to L.I. Reo and to its shareholders), and paragraphs 40 and 41 from the third cause of action (alleging coercion in the signing of the November 23, 1966 Agreement and the related agreements as part of the program to get control of and, in White's interest, to destroy L.I. Reo). The fourth cause of action then alleges that White and Kommer, other officers of White and the White division, the Reo division and the Diamond T division of White Motor and their officials conspired in or about 1966 to combine White's three major truck divisions and to put the largest dealers, including L.I. Reo, selling only Diamond T. or Reo or Diamond Reo trucks out of business so as to relieve White of its contractual duties to them to White's advantage and to the advantage of the dealers handling White division trucks. Paragraph 46 then alleges a series of acts

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pursuant to the alleged conspiracy; (1) the Reo and Diamond T divisions were combined and separate making of Diamond T and Reo trucks was ended; (2) White put White truck labels on Diamond Reo manufactured trucks and offered them for sale through White dealers as White trucks; (3) White sold Reo and Diamond Reo trucks to certain customers at lower prices than those accorded Reo and Diamond Reo dealers; (4) White sold Reo and Diamond parts to White truck dealers at the same price charged to Reo and Diamond Reo dealers while charging Reo and Diamond Reo dealers higher prices for White truck parts than were charged to the White truck dealers; (5) White gave White dealers information on the truck sales of Reo and Diamond dealers so that they could poach on the Reo and Diamond dealers' parts business without giving comparable information to the Reo and Diamond Reo dealers on sales of trucks by White truck dealers; (6) L.I. Reo was one of the dealers so deprived; (7) by the coercion alleged in paragraph 40 and to effectuate the conspiracy alleged in the fourth cause of action the defendants White and Kommer required L.I. Reo, its shareholders and affiliates and their shareholders to make the various agreements; (8) White and Kommer then dominated L.I. Reo as alleged in the first cause of action; (9) White

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and Kommer then exercised their control of L.I. Reo as alleged in the first, second and third causes of action; and (10) as a result White and Kommer forced L.I. Reo into bankruptcy and its assets were seized by White "and plaintiffs were injured."

The fifth and sixth cause of action, while realleging the facts in the first four causes of action, are under the Automobile Dealers Franchise Act, 15 U.S.C. §§1221 et seq., and §197 of the General Business Law of New York, respectively.

THE MOTION TO DISMISS THE FOURTH COUNT

The motion to dismiss the fourth cause of action emphasizes that the factual allegations particular to the fourth cause of action are different in kind from those alleged in the other causes of action and are acts which affected adversely not only L.I. Reo but other Reo dealers and injured L.I. Reo in its capacity as a Diamond Reo dealer and did not, in so doing (assuming the truth of the charge) breach any contractual or fiduciary undertaking specially assumed with respect to the individual plaintiffs, but, if it breached any duty, breached duties of avoiding tortious misconduct that were owed to those damaged directly by it, that is, dealers such as, and including, L.I. Reo. Plaintiffs in contrast

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emphasize that where the alleged wrongdoer owes to the complaining individual plaintiff stockholder a specially assumed duty to deal responsibly with a corporation in which the individual plaintiff is interested as a stockholder, breach of that separately assumed duty owed to the stockholder in a right other than his right as a stockholder is separately actionable by the individual stockholder for the damage to him even though his damage is reflected entirely in his loss of stock value through the direct impact on the corporation of the defendant's wrongdoing. Defendant in turn concedes the possible application of plaintiff's point to the first two causes of action but denies its application to the fourth cause of action.

A difficulty in dealing with the fourth cause of action is that any principle considered dispositive of the motion would necessarily have some application to the other causes of action as well. It may be accurate to say that the wrong (if any) done to L.I. Reo by the kind of act alleged in the fourth cause of action is peculiarly an injury to the corporation and only derivatively to its shareholders. But the same thing can be said of substantially every other act complained of in the first four causes of action. That each act, if actionable at all, was actionable by the corporation

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a fortiori is beyond peradventure. The question raised by this complaint is not with the nature of the acts accused, or the nature of their damaging aspect, but with identification of the nature of the duty not to inflict the kind of damage involved on the corporation and the identity of those to whom the duty was owed; was the duty owed only to the corporation or was it owed in a legally distinct and separately actionable way to stockholders individually?

The primary rule is that for an injury to a corporation only the corporation may sue, either in its own name, or derivatively through an action commenced in the name of a shareholder who joins the corporation as a defendant. In New York the leading case is Niles v. N.Y.C. & H.R.R.R., 1903, 176 N.Y. 119, 123-124. The principle is applied to insolvent corporations for which a receiver has been appointed, Porter v. Sabin, 1893, 149 U.S. 473, the right of action in such case vesting in the receiver or trustee and remaining subject to the administration of the insolvency court. Cf. McCandless v. Furlaud, 1935, 296 U.S. 140, 160-161, 163; Pepper v. Litton, 1939, 308 U.S. 295, 306-307; Bayliss v. Rood, 4th Cir. 1970, 424 F.2d 142, 146.

Ritchie v. McMullen, 6th Cir. 1897, 79 Fed. 522,

525-526, 527, 530, 532-535, 549, which was considered in the decision of Niles, is the leading case for the introduction of a seeming exception covering the case in which a plaintiff stockholder whose damages consist in the diminution in value of his stock in a corporation is permitted an individual recovery for that diminution notwithstanding that it reflects a tortious depletion of the assets of the corporation for which the corporation has an action against the alleged the wrongdoer if the wrongdoer sustained to the plaintiff stockholder a special relation giving rise to a distinctive duty, and the wrongdoer's acts also constitute a distinct breach of the separate duty owed by the wrongdoer to the plaintiff stockholder in respect of his stock. The claim in Ritchie was lost on the merits, but the case has had a wide influence. It rose upon a cross bill among defendants (in an action of extraordinary co mplexity) which presented Ritchie's claim against his codefendants that he had pledged to them stock in two mining companies and a railroad corporation, of which the defendants in the cross bill were themselves also stockholders, officers and directors, to secure large loans they had - severally - made to him; he charged that they, partly assisted

by their hold on Ritchie's pledged stock, controlled the management of the three corporations, and that they, by acts of calculated mismanagement, sought to cause Ritchie to cease to be a stockholder - to "freeze him out"- by so managing the companies' affairs as to diminish the value of Ritchie's stock so that they could acquire the stocks cheaply on forced sales under the pledges. The Court recognized that a stockholder as such cannot sue in his own behalf one who has injured the corporation however much the wrongful acts have diminished the value of his shares (79 Fed. at 533), but the Court considered that the principle did not apply where the accused acts were not only a wrong to the corporation but also a distinct violation of a separate and distinctive duty owed by the wrongdoers directly to the stockholder arising from contact or otherwise (ibid). The Court agreed that if the wrong charged to the defendants in the cross-bill were purely wrongs committed in the defendants' roles as officer-director (such as negligent management or ill-advised acts, including ill-advised or negligent voting of their own stock), the pledgor stockholder would not have an individual action against them for the diminution in value of his stock: the

pledgees' ownership of other stock in the company or their positions as a directors imposed no greater duties upon them in respect to the pledged stock than if they had no relation to the companies at all; liability, the Court pointed out, rose from the pledgees' using their positions as directors and their votes as stockholders intentionally to cheapen the stock of their pledgor in order to get the stock at a foreclosure sale, since that injury was directly inflicted by the pledgees upon the pledgor, and they could not avoid their liability by pleading that the means used to accomplish the wrong also constituted an injury to the corporation for which it might also have sued (79 Fed. at 534). Judge Taft (later Chief Justice Taft) did not decide what relief would have been granted if Ritchie had been right on the merit, but determined that his claim was without merit on the facts. It is notable in Ritchie that to have allowed Ritchie a recovery directly would not only have avoided restoring assets to the corporation, which would have redounded in part to the benefit of the wrongdoing shareholders, but it would also have opened the evidence for the presentation of any such special duties as Ritchie could show were peculiarly owed to him and not to the corporation and which would yet contribute to the determination that the conduct

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was wrongful as against Ritchie whether or not it was wrongful as against the corporation. The measures of responsibility to Ritchie and to the corporation were not necessarily the same: Ritchie and the defendants in the cross- bill were in some sense coventurers in the group of the 3 corporations having allegedly a special relationship to one another out of which might well have grown responsibilities which none of them owed to any one of the corporations involved. Failure to perform such duties, which had a direction toward combining the properties and integrating their enterprises, might have been the responsibility owed to Ritchie but not owed to any one of the companies or to all 3. The relation among the parties to the cross- bill and the pledge relation created responsibilities among the 4 men involved which arose peculiarly out of their relationship to each other and out of the pledge and would have existed no matter what the subject matter of the pledge had been, whether unincorporated properties or stock in companies.

Interestingly Dudley v. Armenia Ins. Co., 1st Dept. 1906, 115 App.Div. 380, 100 N.Y.Supp. 818, decided on the authority of the Niles case essentially, and without citing Ritchie, held that the pledgor of stock in a company which was allegedly taken over by the pledgee and ruined (so that the

plaintiff pledgor's stock was reduced to nil value) did not state a claim upon which the pledgor stockholder could sue individually. In that case XXXX all the stockholders seem to have been in the same situation; all the stock of the corporation seems to have been pledged with the defendant pledgee to secure notes issued by the corporation; hence the damage done was done not only primarily to the corporation but the accused conduct also affected all of the stockholders in their common interest and in the same way; the damage to the corporation comprised the whole injury and damage to the stockholders as an aggregate company. The case may be no longer authoritative; it appears that the pledged stock in Dudley had been sold in foreclosure and that the pledgors may have been left remediless against what was, if the allegation were true, a very serious wrong. The right to redress the wrong, if lodged in the corporation, would have inured to the person who bought the stock in foreclosure at the cheapened price which presumably did not reflect the existence of any supposed right of action owned by the corporation against the wrongdoing pledgee.

Von Au v. Magenheimer, 2d Dept. 1908, 126 App. Div. 257, 110 N.Y.Supp. 629, dealt differently, perhaps, with

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Dudley-type facts. In Von Au three men owned equal shares in a corporation, and one shareholder had lost his mind/and then died, leaving his stock to his widow, who had been his committee during the last part of his life, and was his personal representative. She charged that the surviving stockholder-director-officers had induced her to sell her late husband's stock to the other stockholders at less than its fair value by refraining from declaring adequate dividends on the company's stock (measured against earlier and later dividends), by temporarily inflating their own salaries so as temporarily to absorb the company's earnings, and by falsely saying to plaintiff that the company had suffered such losses that it could not pay a larger dividend and that it had poor prospects. Plaintiff charged that after the affairs of the corporation were readjusted, that the earlier high dividend rates were resumed, the inflated salaries were reduced, and the company went on as before; the plaintiff charged that she had in substance been defrauded. Defendants argued, inter alia, that the remedy was not to sell her stock and sue, but to hold her stock, pursue her remedy as a minority stockholder to redress what was essentially mismanagement of the corporation. The Court acknowledged the principle that for directors in bad faith

and for purposes of their own to refuse to make proper distributions of earnings was primarily an injury to stockholders collectively to be redressed through the corporation by a suit to compel proper distributions, and that, where corporate assets were wasted, the direct injury was to the corporation, which should itself sue, or, if controlled by the wrongdoers, obtain redress through a derivative suit commenced on its behalf by a shareholder. But the Court thought that the particular case was within Ritchie rather than Niles. The Court noted that the wrong was aimed at and injured the plaintiff, and was of a type that had become so familiar as to have its own name - "to freeze out." The Court emphasized that to hold that the corporation only could recover for the wrong either directly or through a derivative suit was to say that any plaintiff, situated as was the plaintiff in Von Au, could recover only if able to penetrate and resist the wrong, hold on to the stock, and initiate an action, and that she would be remediless whenever the strategy of the wrongdoing defendants succeeded. Von Au was affirmed without opinion, 1909, 196 N.Y. 510.

General Rubber Company v. Benedict, 1915, 215 N.Y. 18 seems to be the first decision after Ritchie to consider

the problem carefully. General owned over 99% of the stock of a subsidiary company of the same name operating in Brazil. The defendant, Benedict, was a director of the parent General; he was not a director of the Brazilian subsidiary and that subsidiary was not a party to the action. The local manager of the Brazilian subsidiary became manager of a completely disassociated company named Moju which was in General's own line of business; more, Benedict owned a quarter of Moju's stock. General sued Benedict only, averring that the Brazilian manager had diverted about $185,000 of the Brazilian subsidiary's money to Moju, that Benedict knew of the diversion, acquiesced in and approved it, and never advised General of the Brazilian manager's faithlessness. Benedict urged that any right of action for diverting money from the Brazilian subsidiary belonged to the Brazilian subsidiary and not to General, and that Benedict, therefore, could not be sued by General for the diversion, which if it affected any company, affected the subsidiary and only indirectly damaged General itself in respect of its stockholder interest Judge Cardozo held, for a divided Court, that Benedict was liable to General, of which he was a director, because he was faithless in his

duties of vigilance toward a General asset, that is, the stock General owned in the Brazilian subsidiary. Judge Cardozo emphasized that Benedict's duties were owed to General, the parent, and not to the Brazilian subsidiary, of which he was not a director. He pointed out that the Brazilian subsidiary could not successfully sue Benedict unless it could sufficiently connect him with the Brazilian manager's defalcations, so that Benedict became liable as a joint actor with the manager, and for that reason liable along with him to the Brazilian subsidiary for the branch manager's breach of the duty that he - not Benedict - owed to the Brazilian subsidiary. The Court thought Niles inapplicable, and that Judge Taft in Ritchie made the point by saying that where the wrongful acts are not only wrongs against the corporation but are also violations by the wrongdoer of a duty arising from contract or otherwise and owed directly by the wrongdoer to the stockholder, the stockholder had a direct action against the wrongdoer.

The most significant part of Judge Cardozo's decision was his analysis of General's right of action against Benedict. Benedict had argued that he was probably answer-

able to the Brazilian subsidary, and if it sued, he would pay twice for the same wrong. Insisting, first, that the defendant owed different duties to the two companies and could not be assumedto be liable to one simply because he was liable to the other, Judge Cardozo said that the double liability argument confused cause of action with damages; if, he noted, Benedict was solvent and liable to the Brazilian subsidiary then to the extent of the value to the subsidiary of that cause of action there would be no loss in the value of General's stock in the subsidiary and no right to or risk of a double recovery (215 N.Y. at 24-25). Judge Cardozo emphasized (215 N.Y. at 25) that any judgment against Benedict in favor of General, since it would be final as between them and would not give rise to any right (as in subrogation or claim-over) by Benedict against the primary wrongdoer - or the subsidiary,- required a determination in the ~~action~~ General v. Benedict action of the exact damage-components of the right of action, including taking into account the remedy, if any, available to the subsidiary for the same damage as against the primary wrongdoer or Benedict or both.

Judge Cardozo's concerns in General Rubber with (a) the difference in the measure of duty owed by Benedict to the complaining stockholder, General, individually and to the subsidiary corporation, and with (b) the value of the right of action the subsidiary corporation had to redress the same loss constituted a part of the subsidiary's assets to be reckoned as reducing the amount that General, as a plaintiff injured through a diminution in value of owned stock, could recover in any individual action, are both concerns inseparable from all cases in which a stockholder asserts a separate right of action measured by the alleged diminution in value of his shares flowing from conduct of the defendant which is allegedly damaging to and arguably actionable by the corporation as well as by the plaintiff.

Judge Cardozo's analysis inevitably and inescapably identifies the primary locus of the right of action as a right to reparation for damages in the corporation, and, as lodged in the corporation, eliminates from the supposed diminution in value of any complaining stockholder's stock his ratable indirect interest in the corporation's right of recovery. There can be no race of diligence between the complaining shareholder and the corporation to see which

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recovers first. The complaining shareholder may not recover an unreal diminution in value simply because the corporation had not sued promptly or effectively, nor gather to himself a recovery which, if made by the corporation, would have been distributable to those having interests in the corporation senior to those of the complaining stockholder.

Again, if there is no genuine difference between the duty owed by the allegedly wrongdoing defendant to the corporation and that which he owed to the stockholder, so that the breach of duty relied upon is the same for all stockholders and, again, would be the same for the corporation itself, all reason for defining an exception from the rule of Niles disappears. Meyerson v. Franklin Knitting Mills, 1st Dept. 1918, 185 App.Div. 458, 172 N.Y.Supp. 773, in which, superficially, it would have seemed that a sole stockholder was permitted to recover for breach of a contract made with the corporation, is hardly such a case. It arose on an unusual contract under which the plaintiff, when he bought the stock of the corporation involved from the defendant, also and by the same contract obtained the

undertaking of the defendant-vendor to supply knit fabrics to the corporation which plaintiff was taking over from the defendant. That contract was an entire contract and the defendant breached it by failing to deliver knit fabrics as called for in the contract. For that breach, the Court found, the plaintiff as contractual promisee could sue directly notwithstanding that the corporation had by a separate instrument ratified and agreed to be bound by the sales contract and that it was the one to whom the knit fabrics were to be delivered and which was most directly damaged by the defaults of delivery.

Matter of Auditore, 1928, 249 N.Y. 335 distinguished Niles and followed General Rubber where it appeared that two brothers had owned all of the stock of a corporation and, one brother dying, the surviving brother, who was also administrator of his deceased brother's estate, pillaged the corporation. A minority stockholder sued the faithless brother in the Supreme Court in a derivative suit brought in the corporation's right and recovered a judgment for the full amount of the loss. Execution was issued and returned wholly unsatisfied; the faithless brother was wholly without property. Proceedings were then initiated in the estate of

the deceased brother to surcharge the faithless brother for exactly the same loss, expressed in terms of the diminution in value of the deceased brother's stock in the corporation which came about after the deceased brother's death and during the stewardship of the faithless brother as administrator of his deceased brother's estate. The surcharge was found and sustained as against the surety corporation which had furnished a bond for the faithless brother's performance of his duties as administrator. As in General Rubber the Court was divided, but the majority emphasized that, whatever were the erring brother's responsibilities to the corporation, he was unquestionably responsible as administrator for the proper custodianship of all the assets that came to his hands as administrator, including the half interest in the company which the two brothers had together owned. The Court considered that the faithless brother was liable as an erring administrator independently of and whether or not he had a liability as an erring director and officer of the corporation. Here, again, direct action afforded a recovery in the circumstances in which a corporate recovery would have inured one-half to the benefit of the wrongdoer himself. As in

Perlman v. Feldmann, 2d Cir. 1955, 219 F.2d 173, direct relief in those circumstances sometimes expresses only an economy in the form of equitable relief. The question of reflecting in the separate right of action of the individual stockholder a value for the right of action of the corporation was automatically solved in Matter of Auditore by the complete insolvency of the erring defendant fiduciary. The duty owed by the erring fiduciary as administrator was owed with respect only to the one-half of the stock owned by his deceased brother's estate. No such duty was owed with respect to the administrator's own stock, for that reflected only his own interest in the corporation. Blakeslee v. Sottile, 1922, 118 Misc. 513, 194 N.Y. Supp. 752 is much the same as Matter of Auditore in analysis. Kono v. Roeth, 1st Dept. 1932, 237 App.Div. 252, 260 N.Y. Supp. 662, dealt with a complaint charging that one of the defendants had pledged to plaintiff 80 of the 200 shares of stock of a corporation to secure an indebtedness, and that, thereafter, the pledgor and another stockholder, acting with others, rendered the corporation insolvent and, suspending payment of dividends and booking fraudulent bills

for non-existent charges, caused the corporation to execute fraudulent judgment notes and submit to Sheriffs' sales of all of its properties to a nominee of the conspiring stockholders, who transferred all of the assets to a new corporation without any real interruption or diminution in business or profits. The consequence, it was alleged, was to make the plaintiffs claim, secured by the now worthless stock, altogether worthless. The pledgee sued the alleged wrongdoers and the transferee corporation and the action was dismissed. The Appellate Division reversed on the authority of Von Au, and the further authority of Ritchie and General Rubber cases. The Court considered that the requirement of fair dealing between pledgor and pledgee, making the relationship one of trust and of at least implied contract, gave rise to an individual right of action for the diminution in the value of the pledged stock independent of the existence of the corporation's own action for the entire damage done to its business. Cutler v. Fitch, 4th Dept. 1930, 231 App.Div. 8, 246 N.Y.Supp. 28 is another pledgor-pledgee case in which an individual right of action was allowed against wrongdoing third parties charged with

damaging mismangement of the corporation the stock of which had been pledged to the wrongdoers to secure a guarantee of corporate indebtedness given by the pledging stockholder. However, in Cutler v. Fitch the Court reversed so much of the lower court's judgment as allowed the claim against the defendants who were officers anddirectors of the corporation but not pledgees of any of the plaintiff stockholder's stock notwithstanding that they were charged with involvement in the third party wrongdoer's misconduct with relation to corporate management.

As defendant's argue, it would be easy to say that the fourth cause of action deals specifically with driving L.I.Reo out of business as a dealer in White products in only the same way as that White allegedly acted toward other Reo and Diamond Reo dealers, and that, in consequence, the fourth cause of action is not even formally within the class of cases to which plaintiff's appeal. But paragraphs 46(g), (h), (i), and (j) make that an uncertain ground of distinction from the other causes of action, and, moreover, the argument hardly meets the plaintiff's central argument that the defendant's responsibility arises not out of the nature of the damage but out of the specialty of relation

between the defendant and the plaintiffs, placing the plaintiffs in the position to complain of the breaches of duty to the corporation as being specially actionable breaches of duty distinctly undertaken to them. If the fourth cause of action is insufficient, then it is insufficient for a deeper reason.

It is concluded that the fourth cause of action is insufficient to charge the defendants. In the fourth cause of action no less than in any of the others the charge is of damage inflicted on L.I.Reo, its business, its affairs, its prospects, and its properties. Save for the references to the arrest or threatened arrest of Thomas Vincel, all of the acts complained of directly affect the interests of L.I.Reo primarily and damage the plaintiff only to the extent of and by reason of their interest in L.I.Reo. While there are repeated references to the contract relation and the trust relation, examination of the contract and trust agreement reveals nothing which changes the situation significantly. Very broadly the undertakings of the agreement of November 23, 1966, are primarily and essentially undertakings that run to and not from White. Passing over

the releases of paragraph 1, the agreement contains White's representation that it has taken over the CIT paper and L.I.Reo's representation that it has not undermined the paper by conveying the mortgaged vehicles away; the stockholders agreed to create the Voting Trust with Kommer as trustee; L.I.Reo agrees that it will not take out the working capital loan except on papers and in a form approved by White; L.I.Reo undertakes to pay the balance due on the October 28, 1965 note; L.I.Reo agrees to execute a note covering the $195,000 of current debt and to pay it off according to the scheme of payment outlined and to secure the note by liens on the trucks and parts; L.I.Reo agrees to give a mortgage on its parts inventory, to seek to finance its present and future accounts receivable, and to pay for all new parts C.O.D.; L.I.Reo undertakes, in substance, to order trucks only against firm orders well in hand, and to turn the proceeds of sale over to White to pay off the financing before receiving from White the surplus for its own account; L.I.Reo agrees to set up an escrow account for customer deposits; and during the term of the Agreement L.I.Reo and its stockholders agree on certain non-competition undertakings. The Voting Trust

is certainly exactly that, and, in addition, contains the provisions for the appointment of the general manager. There is no claim that any specific provision of the Voting Trust agreement was violated by the trustee and it does not appear that the trustee took any action other than the appointment of Antelis. Hence it is the bare existence of the contract and the Voting Trust and what they in aggregate represented in terms of restrictions on L.I.Reo's management and the securing of White's position as a creditor that can alone be relied upon as setting up the "special relation" which might take the case out of the normal rule of Niles. But the fundamental difficulty with the contention is that it is necessarily made with relation to every stockholder and to every stockholder precisely in proportion to the extent of his stock interest and because and only because of damage allegedly done directly to the corporation, to L.I.Reo, and only indirectly affecting the stockholder plaintiffs, damaging each plaintiff only as one of the company of stockholders. Essentially the charge is that White and Kommer intermeddled in corporate management, becoming fiduciaries to L.I.Reo, and - in the same sense as an officer or director is a fiduciary toward the

corporation and its stockholders - becoming therefore and derivatively fiduciaries as well for the stockholders, not because of any special relationship to them as individuals that created a differentiable duty to them as individuals, but solely and only because as stockholders the plaintiffs were interested in the corporate business of which White and Kommer arguably made themselves managerial fiduciaries. Whatever implied undertakings of White and Kommer toward each plaintiff arose out of the November 23, 1966 Agreement, the Voting Trust Agreement; and the security and consignment agreements, were undertakings to deal properly with the property, affairs and business of L.I.Reo, and only in that sense embodied a performance responsibility indirectly affecting the interests of stockholders by reason of their economic interest in the corporate business and property. The undertakings of White and Kommer were not, as in the pledge and other cases relied upon by plaintiffs, commitments to deal responsibly with the individual interest of any stockholder in his own stock as a distinct property interest belonging to the stockholder and itself having its distinct value attributes. Nor here is there any argument that, as

in General Rubber and Matter of Auditore, the defendants owed a different duty to L.I.Reo from that which, if any, they owed to all shareholders alike because they were such.

Total redress of the wrongs here alleged would be most readily and directly accomplished by a recovery on behalf of L.I.Reo and in its name. That would restore to each stockholder the whole of his right. But to allow a right of action to exist in the whole body of stockholders to recover the whole of the damage done to L.I.Reo by reason of conduct that was allegedly a breach of duties owed primarily to L.I.Reo, and to the stockholders only derivatively because of and to the extent only of their stockholder interests in the corporation, would produce exactly the effect that Niles forbids.

The defect in plaintiffs' claim goes still deeper. It appears to be common ground that the factual allegations of the present complaint were presented in the first defense and in six counterclaims incorporating the allegations of the first defense to the amended complaint of White in the action in Supreme Court in New York County commenced August 25, 1967. The central claim on the facts was presented also in succinct form as an answer and objection

to the claim filed by White in the bankruptcy proceeding of L.I.Reo. An order was made in the bankruptcy proceeding under date of August 27, 1968, authorizing and directing the trustee in bankruptcy of L.I.Reo to compromise the bankrupt's claim against White and Kommer, and White's claim against the bankrupt. The settlement involved White's paying the trustee $100,000 and withdrawing White's claim of $323,610.14; it required the trustee to discontinue his counterclaim against the claim of White and required the trustee and White to effect a discontinuance with prejudice of the action in the Supreme Court, New York County, the stipulation not in any way to affect the action of White Motor Corporation against Thomas A. Vincel and Thomas A. Vincel's defenses and counterclaims to said action. The order further provided that the stockholders of L.I.Reo could obtain individual releases from White by giving individual releases to White before a date in September 1968 now long past. The stipulation of discontinuance entered in the Supreme Court, New York County case provided that it should not affect and that there should be preserved the rights of White against Thomas Vincel and the rights

of Thomas Vincel against White. The time is not ripe for consideration of the ultimate legal effect of the compromise and the releases separately considered for their own effect, if any, on the stockholder rights put forward in the present action. But it is important to note the explicit recognition that the factual claims made in the present case constituted assets of the bankrupt corporation. That is not really denied by plaintiff's arguments. It underlines the need for accurate analysis of the claims sued upon, and makes it necessary to decide whether the exceptive standing to sue relied on by the plaintiffs can be recognized where it amounts to divesting the corporation of claims primarily belonging to it because measured by its damages and only consequentially reflected in diminished share values. From that point of view it does not matter whether the bankrupt estate realized full or less than full value on the claim. That was a matter to be threshed out before the Referee, and the bankrupt, that is, the present stockholders acting corporately, unsuccessfully opposed the approval of the settlement before the Referee. What appears clearly in this case is that the exceptive

principle relied upon the plaintiffs was not in any of the cases relied upon tested against such a competing interest as that of creditors or that of a centralized administration in insolvency proceedings. Cf. Porter v. Sabin, supra. In addition, the analysis required by General Rubber here leads inevitably to the conclusion that the apparent solvency of White and the identicalness of its responsibility, if any, to L.I.Reo with its responsibility to the whole company of stockholders attempting to sue individually means that the cause of action in each case is precisely the same in every aspect and could not be the subject of separate suits and separate recoveries. Any action maintainable by all of the stockholders suing together to redress a wrong actionable by the corporation because the damage impact of the alleged wrongful acts fell upon it would be legally identical with the corporation's own action. It is such actions that the principle of Niles explicitly forbids. It follows that the fourth cause of action is insufficient, and it must be dismissed.

INTERROGATORIES AND OTHER DISCOVERY MATTERS.

Plaintiffs should answer defendants further inter-

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rogatory of March 20, 1970 numbered 1. It may be that a statement was not prepared for the 11 month period, but the material that will appear in any such statement is germane to the plaintiffs' damage claims and must sooner or later be prepared. If the defendants have set up a statement and wish to serve it on plaintiffs with a notice to admit it pursuant to Rule 36, they may do so; that may simplify the work on both sides.

The same disposition must be made with respect to the second of the further interrogatories dated March 20, 1970.

Plaintiffs must furnish a proper answer to interrogatory 22 of the additional interrogatories served March 20, 1970.

So far as defendant's objections to certain of plaintiff's further interrogatories are concerned, it may well be that plaintiffs will wish to modify those in the light of the ruling on the fourth cause of action, although it is true, as plaintiff has pointed out, that elements of the alleged switching of business from Reo and Diamond Reo to White Division are suggested as part of the other causes of action. Even so, the questions would not appear

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to be ones that should be framed in terms of sales in a particular territory. If the condition complained of existed, it would appear that the more appropriate interrogatories would be those addressed to determining whether the White Division trucks were, as the plaintiff's papers seem to intimate, the same trucks really as Diamond and Reo trucks, and whether there was in fact, on overall White figures, any trend or effort to phasing out the Reo, Diamond Reo, and Diamond trucks in favor of White trucks. The possibility of the collapse of an apparently large dealership for Reo and Diamond Reo trucks in the Long Island area could of course evoke a variety of responses not excluding a determination to press the sales of White trucks as against trucks of a wholly outside competitor until new distribution could be worked out for Reo and Diamond Reo trucks. Such considerations as these make very difficult a determination whether or not it is fair to exact detailed and burdensome discovery, particularly in the direction of damages to support the plaintiff's contention, until there is some indication that the program alleged did exist and was impermissible. In the special circumstances it would

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appear that overall figures and discovery by deposition and limited documentary discovery (e.g., number of units shipped into the territory) would best serve the needs of the occasion.

The objection to further interrogatories 3 and 4 are sustained. The argument made is far fetched and the material sought to be elicited can hardly be of value in the litigation.

Further interrogatories 5, 6 and 8 need not be answered at the present time pending a determination by other discovery means as to whether there is any indication that plaintiffs will continue to press the claim based on attempted diversion of business from Reo and Diamond Reo to White Division. Interrogatory 9 should be reframed; apparently there is no basic objection to it, but it fails certainly to define the area of inquiry.

Interrogatories 10 and 11 are disallowed for the present in view of what has been said above with respect to other modes of attacking the White-Reo problem area.

Interrogatories 12 and 13 on the St. Louis Terminal Warehouse Company field warehousing matter are not adequately answered nor are the interrogatories particularly

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apt to unearth the story, if there is any. The documents so far furnished present a confusing picture of interchanges that appear to be going at snail's pace where urgency might have been expected and prompt action anticipated; it is odd to find that the matter was "signed off" in September when everything was, as a practical matter, thoroughly at an end between the parties. It would appear that complete document discovery on the field warehousing matter, if it is of any importance - and its importance seems marginal - would be more productive than, in effect, conducting depositions via interrogatories. For these reasons only further interrogatories 12 and 13 need not be further answered unless defendants and plaintiffs are unable, without more ado, to produce an integrated set of documents giving the paper history of what must essentially have been a parade of papers.

Interrogatory No. 15 should be answered.

Interrogatory No. 16 should be answered as fully as is reasonably possible under the circumstances.

Document demand No. 5 of plaintiff dated March 17, 1970, is too broad for responsible compliance. The subject

matter is such that it ought properly to be covered by document discovery procedures.

It is noted in going through the answers to the interrogatories even as presented in the consolidated form and with use of the related exhibits and the document production that much of the material prepared and produced is made all but inaccessible for cross reference. For example, of a number of lists of vehicles giving data of different sorts with respect to them, it does not appear that any two lists are given in the same order, or are arranged in a readily convertible order, either by any relevant date or by vehicle number, that could facilitate cross reference. The information given cannot be readily integrated. Possibly access to the present material and simplification of cross reference to any further extension of it would be facilitated if each truck was in effect given a register card on which could be entered answers to all of the questions that have been asked about it with room left for answers to future questions, so that successive xeroxing of the data sheet on the particular vehicles could contain everything that counsel had at any time thought might be relevant with

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respect to that truck. Summary tabulations could be made from those sheets to produce generalized answers on various topics of inquiry. This is merely a suggestion prompted by the great difficulty of trying to trace from one listing to another in the present material.

Accordingly, it is,

ORDERED that the fourth cause of action is dismissed; and it is further

ORDERED that the interrogatories referred to above be answered to the extent indicated; counsel are to agree on dates, and in the absence of agreement, apply for the fixing of dates.

Brooklyn, New York
August 2, 1972.

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M.D.AIELLO, P. AIELLO, and LIRCO CREDIT CORP.,

Plaintiffs

- against -

WHITE MOTOR CORPORATION and GLENN F. KOMMER,

Defendants

- x

69 Civil 753

NOTICE OF MOTION AND MOTION TO PERMIT PLAINTIFFS TO SERVE AN AMENDED COMPLAINT

S I R S :

PLEASE TAKE NOTICE, that upon the proposed amended complaint, plaintiffs will move in Courtroom 8, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York on January 31, 1973, at 4:30 P. M., for an Order pursuant to F.R.C.P. 15(a) permitting plaintiffs to serve an amended complaint, and for such other and further relief as may be just and proper.

Dated: New York, New York
January 18, 1973

Yours, etc.

Hellerstein, Rosier & Rembar
Attorneys for Plaintiffs
19 West 44th Street
New York, New York 10036

By: _____
Myron S. Isaacs

TO:

Reavis & McGrath
Attorneys for Defendants
1 Chase Manhattan Plaza
New York, New York 10005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS A. VINCEL, GRACE VINCEL, NUNO TARDO, IRENE TARDO, WILLIAM BREEN, VIRGINIA BREEN, JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, P. AIELLO, and LIRCO CREDIT CORP.,

Plaintiffs

69 Civil 753

AMENDED COMPLAINT

- against -

WHITE MOTOR CORPORATION and GLENN F. KOMMER,

Defendants

Plaintiffs, by their attorneys, HELLERSTEIN, ROSIER & REMBAR, for their amended complaint allege:

FOR A FIRST CAUSE OF ACTION

1. Jurisdiction is founded upon diversity of citizenship pursuant to 18 U.S.C. Sec. 1332 and upon the Automobile Dealers' Franchise Act (commonly known as the Dealers' Day in Court Act), 15 U.S.C. Secs. 1221-1225 (1956).

2. At all times hereinafter mentioned plaintiffs or their predecessors in interest were shareholders of Long Island Diamond Reo Truck Co., Inc. (hereafter "L.I.REO"), a New York Corporation, owning 100% of the outstanding shares of stock of L. I. REO.

3. There are presently 112.19 outstanding shares of L.I.REO of which 54.19 are shares of Class A (voting) stock and 58 are shares of Class B (non-voting) stock. All these shares are owned by the plaintiffs as follows:

	A	B
Thomas A. Vincel. .	29.53	30.00
Grace Vincel . . .	-	1.00
Nuno Tardo	8.33	15.00
Irene Tardo	-	1.00
William Breen . . .	8.33	6.00
Virginia Breen. . .	-	1.00
Joseph Rummo . . .	2.00	-
Rolf Hoeger. . . .	1.00	-
M.C.Aiello & P. Aiello	-	2.00
Lirco Credit Corp .	5.00	2.00

4. At all times hereinafter mentioned plaintiff THOMAS A. VINCEL was employed by L. I. REO as its President and Sales Manager. His annual salary was $22,454.00 in 1966, and $18,000.00 in 1967. L.I.REO paid the entire premium for a group retirement plan under which as of March 1, 1967, plaintiff THOMAS A. VINCEL's total monthly retirement income at his normal retirement age would have been $247.34. The aforesaid premium, which was equal to approximately 5% of his salary, also paid for life insurance on his life, payable to any beneficiary he might choose, in the sum of $24,734.00. During the years 1966 and 1967, L.I.REO paid all of the premiums for Major Medical Insurance for plaintiff THOMAS A. VINCEL, his wife, and his children. The Major Medical Insurance included $4,000.00 in additional life insurance on his life payable to any beneficiary he might choose.

5. At all times hereinafter mentioned, plaintiff NUNO TARDO was employed by L.I.REO as its Secretary and Parts Department Manager. His annual salary was $20,140.00 in 1966, and $16,800.00 in 1967. L.I.REO paid the entire premium for a group retirement plan under which as of

March 1, 1967, plaintiff NUNO TARDO's total monthly retirement income at his normal retirement age would have been $221.87. The aforesaid premium, which was equal to approximately 5% of his salary, also paid for life insurance on his life, payable to any beneficiary he might choose, in the sum of $22,187.00. During the years 1966 and 1967, L.I.REO paid all of the premiums for Major Medical Insurance for plaintiff NUNO TARDO, his wife, and his children. The Major Medical Insurance included $4,000.00 in additional life insurance on his life payable to any beneficiary he might choose.

6. At all times hereinafter mentioned, plaintiff WILLIAM E. BREEN was employed by L.I.REO as its Vice-President and Service Department Manager. His annual salary in 1966 and 1967 was $16,734.00. L.I.REO paid the entire premium for a group retirement plan under which as of March 1, 1967 plaintiff WILLIAM E. BREEN's total monthly retirement income at his normal retirement age would have been $199.05. The aforesaid premium, which was equal to approximately 5% of his salary, also paid for life insurance on his life, payable to any beneficiary he might choose, in the sum of $19,905.00. During the years 1966 and 1967, L.I.REO paid all of the premiums for Major Medical Insurance for plaintiff WILLIAM E. BREEN, his wife and his children. The Major Medical Insurance included $4,000.00 in additional life insurance on his life payable to any beneficiary he might choose.

7. At all times hereinafter mentioned, plaintiff JOSEPH RUMMO was employed by L.I.REO as its Day Shop Foreman. His annual salary was $11,490.00 in 1966, and $10,200.00 in 1967. L.I.REO paid the entire premium for a group retirement plan under which as of March 1, 1967 plaintiff JOSEPH RUMMO's total monthly retirement income at his normal retirement age would have been $172.35. The aforesaid premium, which was equal to approximately 5% of his salary, also paid for life insurance on his life, payable to any beneficiary he might choose, in the sum of $17,235.00. During the years 1966 and 1967, L.I.REO paid all of the premiums for Major Medical Insurance for plaintiff JOSEPH RUMMO, his wife and his children. The Major Medical Insurance included $4,000.00 in additional life insurance on his life payable to any beneficiary he might choose.

8. At all times hereinafter mentioned, plaintiff ROLF HOEGER was employed by L.I.REO as its Night Shop Foreman. His annual salary was $11,747.00 in 1966, and $10,848.00 in 1967. L.I.REO paid the entire premium for a group retirement plan under which as of March 1, 1967 plaintiff ROLF HOEGER's total monthly retirement income at his normal retirement age would have been $173.16. The aforesaid premium, which was equal to approximately 5% of his salary, also paid for life insurance on his life, payable to any beneficiary he might choose, in the sum of $17,316.00. During the years 1966 and 1967, L.I.REO paid all of the premiums for Major Medical Insurance for plaintiff JOSEPH RUMMO, his wife and his children. The

Major Medical Insurance included $4,000.00 in additional life insurance on his life payable to any beneficiary he might choose.

9. At all times hereinafter mentioned, plaintiff P. AIELLO was employed by L.I.REO as a Mechanic. His annual salary was $7,854.00 in 1966, and approximately $8,300.00 in 1967. During the years 1966 and 1967, L.I.REO paid all of the premiums for Major Medical Insurance for plaintiff P. AIELLO and his wife. The Major Medical Insurance included $4,000.00 in life insurance on his life payable to any beneficiary he might choose.

10. L.I.REO, known formerly as Long Island Reo Truck Co., Inc. was engaged for many years in the business of selling trucks and truck parts and servicing customers' trucks in the Counties of Queens, Nassau and Suffolk in the State of New York. A petition in bankruptcy in regard to L.I.REO was filed with the United States District Court for the Eastern District of New York, on December 21, 1967.

11. At all times hereinafter mentioned defendant WHITE MOTOR CORPORATION (hereafter "WHITE MOTOR") was and is a corporation duly organized and existing under the laws of the State of Ohio; said corporation being engaged in the manufacture of trucks which it sold and sells throughout the United States, including the State of New York.

12. Defendant WHITE MOTOR is licensed to do business in the State of New York, maintaining an office

for the transaction of business in the State of New York, and through its officers, employees, and agents transacts business in the State of New York and derives substantial revenue from the sale of goods in the State of New York.

13. Upon information and belief, at all times hereinafter mentioned the defendant GLENN F. KOMMER (hereafter "KOMMER") was an executive employee of WHITE MOTOR. Upon information and belief at all times hereinafter mentioned after its creation in the spring of 1967 KOMMER was Treasurer of the DIAMOND REO DIVISION of THE WHITE MOTOR CORPORATION (hereafter "DIAMOND REO DIVISION").

14. At all times hereinafter mentioned subsequent to November 23, 1966 defendant KOMMER was the person designated by defendant WHITE MOTOR as Trustee pursuant to a Voting Trust Agreement between the defendant KOMMER, L.I.REO, and certain shareholders of L.I.REO and its affiliated corporations, including plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN who held, and transferred to defendant KOMMER pursuant to the Voting Trust Agreement in exchange for Voting Trust Certificates, 46.19 shares (85%) of the Class A (voting) stock of L.I.REO.

15. In or about June 1957, defendant WHITE MOTOR acquired substantially all the assets of REO MOTORS, INC., a manufacturer of trucks whose principal plant was located at Lansing, Michigan.

16. In or about April 1958, defendant WHITE MOTOR acquired the inventories and other assets of DIAMOND T.

MOTOR TRUCK CO., a manufacturer of trucks.

17. Thereafter, defendant WHITE MOTOR operated three principal truck divisions as follows: WHITE TRUCK DIVISION at Cleveland, Ohio; REO MOTOR TRUCK DIVISION at Lansing, Michigan; and DIAMOND T. MOTOR TRUCK DIVISION at Lansing, Michigan, all engaged in the manufacture of trucks for sale in the United States, including the State of New York, and foreign countries.

18. During the spring of 1967, defendant WHITE MOTOR combined the REO MOTOR TRUCK and DIAMOND T. MOTOR TRUCK divisions into the DIAMOND REO DIVISION which it continued to operate at Lansing, Michigan.

19. At all times hereinafter mentioned, from and after 1959, pursuant to franchises from WHITE MOTOR for Queens, Nassau and Suffolk Counties, the business of L.I.REO was the sale of trucks and parts manufactured by WHITE MOTOR, and the servicing of trucks manufactured by WHITE MOTOR. The trucks were sold under the REO label and in 1967 the DIAMOND-REO label.

20. Beginning in or about November 1966 defendants WHITE MOTOR and KOMMER planned and conspired to acquire domination and control over L.I.REO and its financial affairs, to destroy the working capital of L.I.REO, to acquire the assets of L.I.REO, to drive L.I.REO out of business, and to injure L.I.REO's shareholders, officers, and employees.

21. On or about November 23, 1966, pursuant to said plan and conspiracy, defendant WHITE MOTOR required L.I.REO and plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM E. BREEN, employees, officers and the major shareholders of L.I.REO and its affiliated companies, to enter into a Financing Agreement (annexed as Exhibit A). None of the other shareholders of L.I.REO and its affiliated companies were required to enter into said Agreement. Plaintiffs JOSEPH RUMMO, ROLF HOEGER, M. D. AIELLO, and P. AIELLO executed a general release in favor of WHITE which was attached to the aforesaid Financing Agreement.

22. The Financing Agreement of November 23, 1966 required the aforesaid plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM E. BREEN to deposit all their shares of the voting stock of L.I.REO and four affiliated corporations in a Voting Trust of which the Trustee would be a person designated by defendant WHITE MOTOR, to wit, defendant KOMMER. Said Financing Agreement required L.I.REO to execute a five-year note to defendant WHITE MOTOR, required plaintiff THOMAS A. VINCEL to guarantee the note personally, and required plaintiffs THOMAS A. VINCEL, NUNO TARDO and WILLIAM BREEN to agree that they and members of their families would not, while L.I.REO was indebted to WHITE MOTOR, engage in any business competitive with the business of L.I.REO or of its affiliated corporations.

23. Defendant WHITE MOTOR, pursuant to said plan and conspiracy, required plaintiffs THOMAS A. VINCEL,

NUNO TARDO, WILLIAM E. BREEN, IRENE TARDO and VIRGINIA BREEN, among others, to enter into a Voting Trust Agreement with defendant KOMMER dated December 28, 1966 (annexed as Exhibit B), and to transfer to defendant KOMMER as Trustee, pursuant to said Agreement, all their shares of the voting stock of L.I.REO and its affiliated corporations.

24. Said Voting Trust Agreement was executed by defendant KOMMER and by plaintiffs THOMAS A. VINCEL, NUNO TARDO, WILLIAM BREEN, IRENE TARDO, and VIRGINIA BREEN as Signatories. An annexed consent and agreement were executed by plaintiffs GRACE VINCEL, JOSEPH RUMMO, ROLF HOEGER, M.D.AIELLO, and P. AIELLO. Pursuant to said Voting Trust Agreement, plaintiffs THOMAS A. VINCEL, NUNO TARDO, and WILLIAM E. BREEN transferred to defendant KOMMER, as Trustee, all their shares (46.19 of the 54.19 shares outstanding) of the Class A (voting) stock of L.I.REO, constituting 85% of the voting stock of L.I.REO. Pursuant to said Voting Trust Agreement, plaintiffs THOMAS A. VINCEL, IRENE TARDO, and VIRGINIA BREEN transferred to defendant KOMMER, as Trustee, all their shares of the voting stock of LIRCO ENTERPRISES, INC. (a corporation affiliated with L.I.REO). Pursuant to said Voting Trust Agreement, plaintiffs THOMAS A. VINCEL and NUNO TARDO transferred to defendant KOMMER, as Trustee, all their shares of the voting stock of LIRCO CREDIT CORPORATION (a corporation affiliated with L.I.REO). Pursuant to said Voting Trust Agreement the aforesaid plaintiffs were issued Voting

Trust Certificates by the Trustee, KOMMER, for the shares of voting stock delivered by each of them to KOMMER.

25. Said Voting Trust Agreement provided, among other things:

> "The Trustee agrees that during the term of this Agreement, he will not cause any of the corporations to be dissolved or totally or partially liquidated without having received the prior written consent of the signatories."

Said Voting Trust Agreement also provided that the Trustee would be liable for

> "such loss or damage as the Voting Trust Certificate holders may suffer by reason of his willful misfeasance or gross negligence."

26. The Voting Trust Agreement contained the following provisions for the appointment of a General Manager of L.I.REO by the Trustee:

> "It is understood and agreed that the Trustee may cause L. I. Reo's Board of Directors to appoint a person acceptable to him to act as L. I. Reo's General Manager, whose salary shall be paid by the Trustee . . ."

27. Thereafter, pursuant to the Voting Trust Agreement, WHITE MOTOR and KOMMER selected SAMUEL ANTELIS (hereafter "ANTELIS"), a resident of New York, to be General Manager of L.I.REO and required the directors of L.I.REO to appoint him as General Manager. The Board of Directors of L.I.REO thereupon adopted a resolution providing in part:

> "RESOLVED that Mr. Samuel Antelis of 172-20 133rd Avenue, Jamaica, New York, be and he hereby is appointed General Manager of this Corporation, to serve at the pleasure of G.F.Kommer, voting Trustee . . ."

28. ANTELIS served as General Manager of L.I.REO at the pleasure of defendants WHITE MOTOR and KOMMER and under their direction and supervision, and acted at all times as the agent and employee of defendant WHITE MOTOR and KOMMER.

29. By reason of the foregoing defendants WHITE MOTOR and KOMMER dominated and controlled L.I.REO and its financial affairs.

30. All monies realized from the sale of trucks and truck parts, and all other income realized by L.I.REO, were turned over by L.I.REO's officers and employees to the control of ANTELIS, and the application of said monies was in the exclusive control of ANTELIS.

31. L.I.REO, its officers and shareholders, relied upon defendants WHITE MOTOR and KOMMER to conduct the financial affairs of L.I.REO in good faith and in the best interests of L.I.REO, all of its creditors and its shareholders.

32. Defendants WHITE MOTOR and KOMMER did not act in good faith and in the best interests of L.I.REO, its creditors and stockholders, in the conduct of the financial affairs of L.I.REO but conducted them and caused ANTELIS to conduct them in a manner designed to effectuate the plan and conspiracy referred to in paragraph 20 of this amended complaint and to enable defendant WHITE MOTOR to claim at will that L.I.REO had breached its agreements with defendant WHITE MOTOR.

33. Defendant WHITE MOTOR, with the active assistance of defendant KOMMER and with the intent and purpose to effectuate the aforesaid plan and conspiracy, to evade the contractual and fiduciary obligations of defendant WHITE MOTOR to L.I.REO and the contractual and fiduciary obligations of defendants WHITE MOTOR and KOMMER to the plaintiffs, to destroy the business of L.I.REO, and to cause injury to plaintiffs, determined to and did claim that its own acts and those of its agents (defendant KOMMER and ANTELIS) in the conduct of the financial affairs of L.I.REO constituted breaches by L.I.REO of its agreements with defendant WHITE MOTOR.

34. Using the alleged breaches as a pretext, defendant WHITE MOTOR, with the active assistance and participation of defendant KOMMER, declared L.I.REO to be in default under its agreements with defendant WHITE MOTOR, demanded possession of and seized all trucks and parts owned and possessed by L.I.REO, demanded full payment of monies allegedly owing to WHITE MOTOR, and took steps to enforce said unwarranted demands, and to cause L.I.REO to close its doors, to discontinue its business, and to be liquidated and dissolved without having received the prior consent, written or oral, of any of the plaintiffs.

35. Prior thereto L.I.REO was one of the largest dealers in DIAMOND REO trucks and had made sales of approximately $12,000,000 under the franchises from WHITE MOTOR. L.I.REO's sales aggregated $2,710,131 during the fiscal year ending September 30, 1965, and $2,961,625

during the fiscal year ended September 1966, and were approaching a record during the fiscal year 1967. L.I.REO's operations were profitable and its prospects excellent.

36. In reliance upon its franchises from defendant WHITE MOTOR and the contractual and trust arrangements of L.I.REO and its stockholders with defendants WHITE MOTOR and KOMMER, L.I.REO and its affiliated corporations purchased vehicles and parts and made substantial capital investments for the purpose of increasing the sales volume and potential of L.I.REO. In reliance upon said franchises and contractual and trust arrangements, plaintiffs THOMAS A. VINCEL, NUNO TARDO, WILLIAM E. BREEN, JOSEPH RUMMO, ROLF HOEGER, and P. AIELLO devoted their talents and an extraordinary amount of time and effort to the building of a valuable distributorship of defendant WHITE MOTOR's trucks.

37. As a result of the aforesaid acts of defendants WHITE MOTOR and KOMMER which constituted willful misfeasance and gross negligence as those terms are used in the Voting Trust Agreement, L.I.REO was unable to fill orders on hand for new trucks and parts and to continue negotiations for the future sale of trucks and parts, its working capital and its good will were destroyed, and L.I.REO was forced into bankruptcy and was caused to discontinue its business and to be liquidated and dissolved without having received the prior consent, written or oral, of any of the plaintiffs.

38. Plaintiffs, as holders of 100% of the stock of L.I.REO, have been directly damaged by the destruction of business, liquidation, and dissolution of L.I.REO, carried

out and caused by defendants WHITE MOTOR and KOMMER. Plaintiffs THOMAS A. VINCEL, NUNO TARDO, and WILLIAM E. BREEN as officers of L.I.REO, have been directly damaged by the destruction of business, liquidation, and dissolution of L.I.REO, carried out and caused by defendants WHITE MOTOR and KOMMER. Plaintiffs THOMAS A. VINCEL, NUNO TARDO, WILLIAM E. BREEN, JOSEPH RUMMO, ROLF HOEGER, and P. AIELLO, as employees of L.I.REO, have been directly damaged by the destruction of business, liquidation, and dissolution of L.I.REO, carried out and caused by defendants WHITE MOTOR and KOMMER.

39. The foregoing acts of the defendants were in breach of the contractual relationship existing between the plaintiffs or their predecessors in interest and the defendants.

40. By reason of the foregoing plaintiffs have been damaged in the sum of $3,000,000.

FOR A SECOND CAUSE OF ACTION

41. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 39 of this amended complaint as though fully set forth herein.

42. Defendants WHITE MOTOR and KOMMER assumed fiduciary obligations directly to plaintiffs THOMAS A. VINCEL, NUNO TARDO, and WILLIAM E. BREEN, and indirectly to the other plaintiffs, to act in the best interests of L.I.REO in the control and management of L.I.REO and its financial affairs, and not to cause the liquidation or

dissolution of L.I.REO without having received the prior written consent of plaintiffs THOMAS A. VINCEL, NUNO TARDO, WILLIAM E. BREEN, IRENE TARDO, and VIRGINIA BREEN.

43. After obtaining domination, control and management of L.I.REO and its financial affairs, defendants WHITE MOTOR and KOMMER breached their said fiduciary obligations; acted in their own selfish interests and in bad faith against the interests of L.I.REO and the plaintiffs, and, without having received the prior consent, written or oral, of any of the plaintiffs caused L.I.REO to be liquidated and dissolved. Said breaches and acts constitute willful misfeasance and gross negligence as those terms are used in the Voting Trust Agreement.

44. By reason of the foregoing, plaintiffs have been damaged in the sum of $3,000,000.

FOR A THIRD CAUSE OF ACTION

45. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 39 of this amended complaint as though fully set forth herein.

46. The Financing Agreement and the Voting Trust Agreement were executed by L.I.REO and by plaintiffs THOMAS A. VINCEL, NUNO TARDO, WILLIAM E. BREEN, IRENE TARDO, and VIRGINIA BREEN as a result of intimidation, duress and coercion on the part of defendants WHITE MOTOR and KOMMER in that defendants WHITE MOTOR and KOMMER threatened to cancel the franchise of L.I.REO, put L.I.REO out of

business, and cause criminal proceedings to be brought against L.I.REO's officers unless the agreements were executed; and said agreements would not have been executed by L.I.REO, or by said plaintiffs, had it not been for such intimidation, duress, and coercion.

47. The said agreements were extremely onerous in their terms and were designed by defendants WHITE MOTOR and KOMMER to enable them to acquire domination and control of L.I.REO and its financial affairs, to destroy the working capital and acquire the assets of L.I.REO; to drive L.I.REO out of business; to cause L.I.REO to be liquidated and dissolved; and to injure the plaintiffs.

48. By reason of the foregoing, plaintiffs have been damaged in the sum of $3,000,000.

49. The foregoing acts of the defendants were willful and malicious and done with intent to injure and harm L.I.REO's shareholders, officers and employees. Plaintiffs have been further damaged in the sum of $3,000,000.

FOR A FOURTH CAUSE OF ACTION

50. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 39, paragraphs 42 and 43, and paragraphs 46 and 47 of this amended complaint as though fully set forth herein.

51. Upon information and belief defendants WHITE MOTOR and KOMMER, officers of WHITE MOTOR, the WHITE MOTOR TRUCK DIVISION, REO MOTOR TRUCK DIVI ON and DIAMOND T.

MOTOR TRUCK DIVISION of WHITE MOTOR, and officials of said divisions, entered into a conspiracy in or about 1966 to combine WHITE MOTOR's major truck divisions and to drive out of business the largest dealers, including L.I.REO, selling only DIAMOND T. or REO or DIAMOND REO trucks, so as to circumvent WHITE MOTOR's contractual obligations and franchise commitments to them, thereby benefiting defendant WHITE MOTOR and distributors of WHITE MOTOR trucks.

52. Upon information and belief, pursuant to said conspiracy, during and after the year 1966:

(a) Defendant WHITE MOTOR's REO MOTOR TRUCK DIVISION and its DIAMOND T. MOTOR TRUCK DIVISION were combined and the separate manufacture of DIAMOND T. trucks and REO trucks were discontinued.

(b) Defendant WHITE MOTOR and its co-conspirators offered and are offering the sale of trucks and parts manufactured at the DIAMOND REO DIVISION at Lansing, Michigan, under the WHITE MOTOR label through WHITE MOTOR branches and to dealers under franchise from WHITE MOTOR's WHITE MOTOR TRUCK DIVISION.

(c) Defendant WHITE MOTOR and it co-conspirators sold and are selling REO trucks and DIAMOND REO trucks to certain customers at prices lower than its prices to REO and DIAMOND REO dealers.

(d) Defendant WHITE MOTOR and its co-conspirators sold and are selling REO truck parts and DIAMOND REO truck parts to WHITE MOTOR dealers at the same prices charged to REO and DIAMOND REO dealers, while charging REO

and DIAMOND REO dealers higher prices for WHITE MOTOR truck parts than the prices charged to WHITE MOTOR dealers.

(e) Defendant WHITE MOTOR and its co-conspirators gave and are giving to WHITE MOTOR branches and dealers detailed information on sales of trucks by REO and DIAMOND REO dealers in order to enable the WHITE MOTOR branches and dealers to take away from the REO and DIAMOND REO dealers the parts business on trucks sold by the REO and DIAMOND REO dealers, and without giving comparable information to REO and DIAMOND REO dealers on sales of trucks by WHITE MOTOR branches and dealers.

(f) Up to the time that defendants WHITE MOTOR and KOMMER drove L.I.REO out of business, L.I.REO was one of the REO and DIAMOND REO dealers deprived of business and injured by the aforesaid conspiracy and practices of defendant WHITE MOTOR and its co-conspirators.

(g) By means of intimidation, duress and coercion as alleged in paragraph 46 of this complaint, and for the purposes of the aforesaid conspiracy, defendants WHITE MOTOR and KOMMER required L.I.REO and its shareholders, and L.I.REO's affiliated corporations and their shareholders to enter into the agreements and commitments alleged in paragraphs 21 through 27 of this amended complaint.

(h) Defendants WHITE MOTOR and KOMMER dominated and controlled L.I.REO in the manner alleged in paragraphs 20 through 30 of this amended complaint.

(i) Defendants WHITE MOTOR and KOMMER exercised their control of L.I.REO in the manner alleged

in paragraphs 32 through 34 and paragraphs 37, 43, 46, 47, and 49 of this amended complaint.

(j) As a result of this conspiracy and unfair competition, L.I.REO was driven out of business and caused to be liquidated and dissolved, its working capital was destroyed, its assets were seized by WHITE MOTOR, and the plaintiffs were injured.

53. By reason of the foregoing, the plaintiffs have been damaged in the sum of $3,000,000.

54. The foregoing acts of the defendants were willful and malicious and done with intent to injure and harm the plaintiffs. The plaintiffs have been further damaged in the sum of $3,000,000.

FOR A FIFTH CAUSE OF ACTION

55. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 39, paragraphs 42 and 43, paragraphs 46 and 47, and paragraphs 51 and 52 of this amended complaint as though fully set forth herein.

56. The defendants failed to act in a fair and equitable manner toward L.I.REO and the plaintiffs and coerced and intimidated L.I.REO and the plaintiffs and cancelled the aforementioned franchise of L.I.REO to the damage of L.I.REO and the plaintiffs, in violation of the Automobile Dealers' Franchise Act, 15 U.S.C. Secs. 1221-1225.

57. As a result of the aforesaid the plaintiffs have been damaged in the sum of $3,000,000.

58. As a result of the aforesaid violation of the Automobile Dealers' Franchise Act the plaintiffs have incurred and will incur legal expenses in the sum of $100,000.

FOR A SIXTH CAUSE OF ACTION

59. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 39, paragraphs 42 and 47, paragraphs 46 and 49, paragraphs 51 and 52, and paragraph 50 of this complaint as though fully set forth herein.

60. The defendants terminated the dealer franchise running from defendant WHITE MOTOR to L.I.REO and terminated defendants' other agreements with L.I.REO and its shareholders without cause, to the damage of L.I. REO and the plaintiffs and in violation of Sec. 197 of the General Business Law of the State of New York.

61. As a result of the aforesaid plaintiffs have been damaged in the sum of $3,000,000.

WHEREFORE, plaintiffs demand judgment against the defendants in the sum of $3,000,000 on the first cause of action; in the sum of $3,000,000 on the second cause of action; in the sum of $3,000,000 on the third cause of

action with an additional $3,000,000 as punitive damages on said cause of action; in the sum of $3,000,000 on the fourth cause of action with an additional $3,000,000 as punitive damages on said cause of action; in the sum of $3,000,000 on the fifth cause of action with an additional $100,000 for legal expenses on said cause of action; and in the sum of $3,000,000 on the sixth cause of action; together with costs and disbursements.

HELLERSTEIN, ROSIER & REMBAR
Attorneys for Plaintiffs
19 West 44th Street
New York, New York 10036

by: _____
Myron S. Isaacs

Dated: New York, New York
January 17, 1973

EXHIBIT A

Financing Agreement dated November 23, 1966
attached to plaintiffs' complaint
at page 23A of appendix

EXHIBIT B

Voting Trust Agreement
dated December 29, 1966
attached to plaintiffs' complaint
at page 39A of appendix

Service of 2 copies of this within
APPENDIX is admitted this
5TH day of DECEMBER 1974
Reavis & McGrath by Lawrence W. Bass
ATTORNEYS FOR DEFENDANTS-APPELLEES